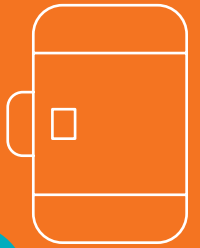
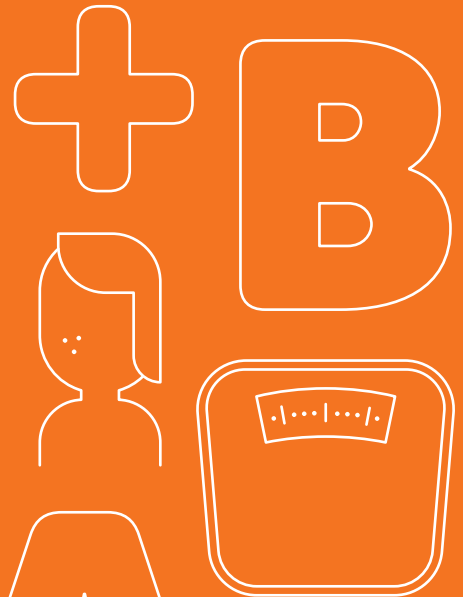
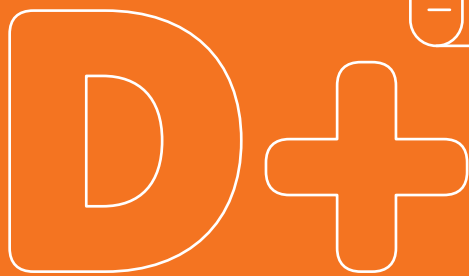




# Report Card 2021



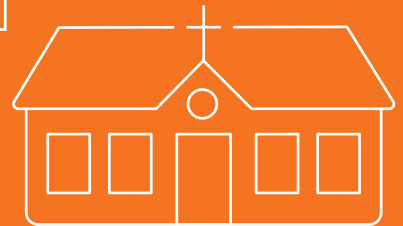
**Is Government  
keeping its promises  
to children?**



**CHILDREN'S  
RIGHTS**

**ALLIANCE**

Uniting Voices For Children



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# Foreword

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Report Card 2021 is the first analysis of Fianna Fáil, Fine Gael and the Green Party's joint *Programme for Government: Our Shared Future* and how it performed for children in 2020. We have carefully selected 16 promises to children and have rated the Government on its efforts since their formation from June to December 2020. As always, our independent panel of experts, chaired by Judge Catherine McGuinness graded the Government's performance.

Although it is now in its thirteenth year, this year's Report Card is different to all our previous reports down the years. Since March 2020, Covid-19 has turned the world upside down. This is particularly true for children, especially vulnerable ones who have been the most affected. We have continually called for their unique needs to be front and centre during the pandemic, yet they were barely considered in initial government plans.

It is through a pandemic lens that this year's report should be viewed. There have been immense challenges for sure, which has stymied some government action. This plays out in the grades with the new government securing a report card with 8 Ds, 7 Cs and just 1 B – hardly stellar results.

The silver lining is that despite these challenging circumstances some important new commitments were made, including pathways for undocumented children and on the long-awaited reform of the family law system.



**The positive progress during 2020 must now be built upon and momentum for change maintained despite the deeply challenging circumstances we face.**



Similarly, there was a continuity of work from the previous government and new urgency given the pandemic, resulting in encouraging action in some areas, including reform of early childhood education and care and Direct Provision and other positive outcomes from emergency protection measures such as a reduction in family homelessness.

But there is no time to waste. With all the turbulence and turmoil, it is easy to forget that approximately 60,000 children will have been born in Ireland in 2020. For these babies and for the million preschoolers, children and teens, childhood has been at a standstill. These children are growing up in extraordinary circumstances and for the Government, this is uncharted territory.

We must make plans for children's needs now and in the future. Failure to act for our youngest people will have clear consequences for their health, wellbeing and educational progress. The impact of childhood lasts a lifetime, after all.

In many ways, a child's chances of doing well during the pandemic is down to the capacity of their parents to support them. Covid-19 has left children exposed. Parents are doing their best, but they can't do it on their own. We have a collective responsibility to ensure that all children are safe, supported and able to achieve their full potential and Government must lead from the top on this.

We have heard heart-breaking stories of children hungry due to family job losses and food poverty. Mums and Dads have told us that their children with special needs have severely regressed due to school closures. They say they can no longer cope. Children at risk of abuse and neglect no longer have the safety net of school yet are more vulnerable than ever in the hermetically sealed environment that can sometimes be home.

It is clear that where problems already existed for families, Covid-19 has made these worse, but without the same supports available. For other families, the extraordinary circumstances of the pandemic will have created new hardships and vulnerabilities. We are seeing new levels of need surfacing in families who were previously managing, and there is a risk that problems go undetected and unsupported due to the lack of contact with outside services during lockdown.

The pandemic has heightened the need for sustained investment to close the inequality gap and ensure all families receive the support they need so their children can thrive. These issues will have long-term consequences if they are not dealt with now.

The good news is that there are opportunities to make lasting change. It is the Children's Rights Alliance's job to join up the dots and call for those things that put children's best interests at the centre of policy, law and services. A new national children's strategy is due in 2021, which is a good place to start. We need to capitalise on this opportunity to put in place a robust recovery strategy for all children, especially for those who need it most.

Ireland will come under international scrutiny by a top group of independent experts, the UN Committee on the Rights of the Child culminating in a review in Geneva in early 2022. The Committee on Rights of Persons with Disabilities will also shine a spotlight on Ireland as it is due to be reviewed later this year. This is our opportunity to reflect and take a critical look at where we have fallen short for our most vulnerable children and ensure that going forward, no child is left behind.

Looking to 2021, there are deep challenges ahead but the *Programme for Government* provides a roadmap for improvement. The positive progress during 2020 must now be built upon and momentum for change maintained despite the deeply challenging circumstances we face. The Government must seize new opportunities and harness our collective creativity like never before. We must prioritise children's futures. This is not a choice but an imperative.

# Children's Rights Alliance Members

Founded in 1995, the Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

- Ag Eisteacht
- Alcohol Action Ireland
- Amnesty International Ireland
- An Cosán
- AsIAM
- Association of Secondary Teachers Ireland (ASTI)
- ATD Fourth World – Ireland Ltd
- Atheist Ireland
- Barnardos
- Barretstown Camp
- Bedford Row Family Project
- BeLonG To Youth Services
- Care Leavers' Network
- Catholic Guides of Ireland
- Children's Books Ireland
- Child Care Law Reporting Project
- Childhood Development Initiative
- Childminding Ireland
- Children in Hospital Ireland
- COPE Galway
- Cork Life Centre
- Crosscare
- CyberSafeKids
- Dalkey School Project National School
- Daughters of Charity Child and Family Service
- Dental Health Foundation of Ireland
- Department of Occupational Science and Occupational Therapy, UCC
- Disability Federation of Ireland
- Doras
- Down Syndrome Ireland
- Dublin Rape Crisis Centre
- Dyslexia Association of Ireland
- Dyspraxia/DCD Ireland
- Early Childhood Ireland
- Educate Together
- EPIC
- Extern Ireland
- Focus Ireland
- Foróige
- Gaelscoileanna Teo
- Good Shepherd Cork
- Immigrant Council of Ireland
- Inclusion Ireland
- Institute of Guidance Counsellors
- Irish Aftercare Network
- Irish Association for Infant Mental Health
- Irish Association of Social Workers
- Irish Centre for Human Rights, NUI Galway
- Irish Congress of Trade Unions (ICTU)
- Irish Council for Civil Liberties (ICCL)
- Irish Foster Care Association
- Irish Girl Guides
- Irish Heart Foundation
- Irish National Teachers Organisation (INTO)
- Irish Penal Reform Trust
- Irish Primary Principals Network
- Irish Refugee Council
- Irish Second Level Students' Union (ISSU)
- Irish Society for the Prevention of Cruelty to Children
- Irish Traveller Movement
- Irish Youth Foundation (IYF)
- Jack & Jill Children's Foundation
- Jigsaw
- Katharine Howard Foundation
- Kids' Own Publishing Partnership
- Mecpaths
- Mental Health Reform
- Mercy Law Resource Centre
- Migrant Rights Centre Ireland
- Mothers' Union
- My Project Minding You
- Museum of Childhood Project
- Music Generation
- National Childhood Network
- National Forum of Family Resource Centres
- National Parents Council Post Primary
- National Parents Council Primary
- National Youth Council of Ireland
- Novas
- One Family
- One in Four
- Pavee Point
- Peter McVerry Trust
- Private Hospitals Association
- Psychological Society Ireland
- Rainbow Club Cork
- Rainbows Ireland
- Rape Crisis Network Ireland (RCNI)
- Realt Beag/Ballyfermot Star
- Respond Housing
- SAFE Ireland
- Saoirse Housing Association
- SAOL Beag Children's Centre
- Scouting Ireland
- School of Education UCD
- Sexual Violence Centre Cork
- Simon Communities of Ireland
- SIPTU
- Social Care Ireland
- Society of St. Vincent de Paul
- Sonas Domestic Violence Charity
- SPHE Network
- SpunOut.ie
- St. Nicholas Montessori College
- St. Nicholas Montessori Teachers' Association
- St. Patrick's Mental Health Services
- Suas Educational Development
- Teachers' Union of Ireland
- Transgender Equality Network Ireland (TENI)
- The Ark, A Cultural Centre for Children
- The Prevention and Early Intervention Network
- The UNESCO Child and Family Research Centre, NUI Galway
- Traveller Visibility Group Ltd
- Treoir
- UNICEF Ireland
- Young Ballymun
- Let's Grow Together! Infant and Childhood Partnerships CLG
- Young Social Innovators
- Youth Advocate Programme Ireland (YAP)
- Youth Work Ireland

# Acknowledgements

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The Children's Rights Alliance wishes to thank all those who contributed to researching and compiling this report. In particular, the Children's Rights Alliance would like to thank our partners in helping to produce Report Card 2021 including Pobal, the Department of Rural and Community Development, the Community Foundation for Ireland and the Tomar Trust.

The Children's Rights Alliance would like to thank the Government Departments, statutory and non-statutory agencies for their assistance, comments and co-operation in preparation of this report:

- Department of Children, Equality, Disability, Integration and Youth
- Department of Education
- Department of Housing, Local Government and Heritage
- Department of Health
- Department of Justice
- Department of Social Protection
- Department of the Environment, Climate and Communications
- Pobal
- Tusla, the Child and Family Agency
- Health Service Executive

The expert contributions of Children's Rights Alliance member organisations are gratefully acknowledged, in particular:

- Alcohol Action Ireland
- AsIAm
- ASTI
- Barnardos
- BeLonGTo
- Children in Hospital Ireland
- Crosscare
- CyberSafeKids
- Dental Health Foundation
- Down Syndrome Ireland
- Dublin Rape Crisis Centre

- Educate Together
- Extern
- Focus Ireland
- Inclusion Ireland
- Institute of Guidance Councillors
- Irish National Teachers' Organisation (INTO)
- Irish Aftercare Network
- Irish Heart Foundation
- Irish Traveller Movement
- ISPCC
- Irish Penal Reform Trust
- Katharine Howard Foundation
- Mental Health Reform
- Migrant Rights Centre of Ireland (MRCI)
- One Family
- Pavee Point
- Prevention and Early Intervention Network (PEIN)
- Rainbows Ireland
- Rape Crisis Network Ireland
- Safe Ireland
- SIPTU
- St. Patrick's Mental Health Services
- Society of St. Vincent de Paul

Thanks also to Professor Geoffrey Shannon, Child Law Expert and Founding Patron of the Children's Rights Alliance; Professor Conor O'Mahony, Special Rapporteur on Child Protection and Faculty of Law, University College Cork; Maria Corbett, Deputy Director, Child Care Law Reporting Project; Frances Chance, Chairperson, Prevention and Early Intervention Network; and Professor Nóirín Hayes, Visiting Professor, TCD.

Particular thanks are also due to the Children's Rights Alliance Board for their support and oversight of the process.

The Alliance would also like to acknowledge the work of Children Now, based in California, whose annual report card provided the initial inspiration for this series.



We extend our thanks to the members of the Assessment Panel who, by assessing the grades in each section and adding their considerable experience, validate this report. The grades allocated represent the collective views of the Panel rather than the views of any individual.

The Assessment Panel comprised:

- Seamus Boland, Chief Executive Officer, Irish Rural Link
- Tom Costello, Member of the National Advisory Committee Children and Young People
- Professor Maurice Devlin, Director of the Centre for Youth Research and Development, School of Applied Social Studies, National University of Ireland, Maynooth
- Professor Áine Hyland, Emeritus Professor of Education and former Vice-President of University College Cork
- David Joyce, Equality Officer, Irish Congress of Trade Unions
- Dr. Sindy Joyce, Human Rights Activist and Member of President Michael D Higgins' Council of State
- Emma Kerins, Director of Policy and Communications, Chambers Ireland
- Judge Catherine McGuinness, former member of the Supreme Court of Ireland and member of the Council of State (Chair)
- Dr Aisling Parkes, Law Lecturer, University College Cork

Finally, massive thanks go to the Report Card team for their incredible hard work and commitment to produce a superb publication once again this year.

# Executive Summary

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Report Card 2021 is the first analysis of the new ***Programme for Government: Our Shared Future*** and represents our first collective opportunity to measure the Government's progress on its commitments and to ensure children's rights are safeguarded and promoted in this new Government's vision for Ireland. This year's work will lay the crucial foundation for progressing each commitment over the Government's five-year term.

We examined the *Programme for Government's* commitments to children and young people and selected 16 commitments which are clear and measurable, and which have significant potential to improve the quality of life for children growing up in Ireland. A wide breadth of commitments covering infancy to adolescence were selected, including commitments made to marginalised groups given that their rights and needs can often be overlooked. As in other years, members, Government officials and sector representatives had an opportunity to comment on our analysis, and once finalised, this went to an independent panel of experts for grading.

Overall, for the work undertaken in the last six months of 2020, the Government receives a 'C-' grade. Many of the positive developments we saw during this time were a continuity of work which had been in train under the previous Government, but which took on a new level of urgency in the context of the global pandemic.

In particular, Covid-19 has rapidly accelerated **reform of the early childhood education and care (ECEC) system**. Lockdown in March changed the design of the ECEC system, with the State rather than businesses in the market, paying the wages of childcare providers directly. This Government intervention could be seen as a first step towards a publicly funded system which recognises early childhood education and care as a public good and reflects this through a stable wage for educators as part of a new social contract. Consultations on a Workforce Development Plan and a new Funding Model rounded out the year, and helped the Government achieve a 'C' grade. This work must be continued in 2021, with greater attention given to the

establishment of **Childcare Ireland**, the overarching body that will coordinate all existing early years functions and provide for staff training and professional development. Progress on establishing the agency has been slow and the Government's 'D' for this latter commitment signals much more work is needed on this going forward.

For school-aged children, the rate of progress in 2020 was too slow, particularly for those living in poverty and those with additional needs. During the Covid-19 pandemic, it was children with special educational needs and those experiencing family hardships and other adversities who bore the brunt of school closures. Yet the long-term commitments which could enhance their experience and attainment when they return to the classroom appear to have moved down the priority list.

Critically, just under half of parents at primary level and only one third of parents at second level can meet the costs of returning to school out of their regular household budget, demonstrating the financial strains on households due to the cost of education. The Government committed to commence a **free school books pilot** in September 2020 and, pending a successful review of that pilot, expand the scheme to schools nationwide, as resources allow. This year they received a 'C-' grade for this work. Although the pilot commenced, its size is limited and there has been no provision made in Budget 2021 for its continuation. Further, there are no clear timelines in place for the completion of the review of the pilot and further roll-out of the scheme.

When regular schooling resumes, it is vital children can access their right to education in full. Throughout 2019, the **use of reduced timetables** without any procedural safeguards continued to be a concern and disproportionately affected children with special educational needs and disabilities; children of Traveller and Roma heritage; and children experiencing trauma or adversity. But 15 months later, draft guidelines to ensure reduced timetables are only used in a manner which is 'limited, appropriate and absolutely necessary' have still not been issued to schools, and there is no clarity on how Government will ensure these guidelines are adhered to. For this reason, progress against this commitment receives a 'D-' grade.

Ensuring that **children with special educational needs** receive their

constitutional right to education receives a 'D' grade, because while Budget 2021 continued the upward investment in special education support, there is still an insufficient number of appropriate school places for children with additional needs and demand for Assessments of Needs has outpaced system capacity. A top priority for 2021 will be to ensure that no matter where a child calls home, they can access an appropriate school place and receive support in line with their needs.

Access to education remains a concern for **Traveller and Roma children**.

The Covid-19 pandemic has had a significant adverse impact on Traveller and Roma young people's education and has also affected delivery and evaluation of the pilot projects aimed at increasing school engagement and retention for this marginalised group. While the pilot teams provided Information and Communication Technology (ICT) and additional support to children and families during home-schooling, progress on the evaluation has been disrupted and only a baseline assessment of need has been conducted. For this reason, the Government receives a 'D+' grade for this commitment.

Given the toll the pandemic is taking on **child and adolescent mental health**, it is vital that this becomes a priority area for Government going forward. *Sharing the Vision*, the new mental health policy framework for Ireland, recognises that adult inpatient units are not appropriate for children, and highlights that where no alternative is available, the Child and Adult Mental Health Services (CAMHS) inpatient standard must still apply. For this, we have given the Government a cautious 'C' grade - but for sustainable progress, we urgently need to decrease the overall numbers in need of acute psychiatric support and boost workforce capacity and investment. Without action on these fronts, children will continue to have their first experience of inpatient care in age-inappropriate wards.

The *Programme for Government* has made two commitments in relation to food poverty that include working across government to address **food poverty** in children and to review and expand the roll-out of the new Hot School Meals Initiative. In 2020, we saw the continued provision of funding to expand this initiative, however, the review of the pilot has not been completed and there is no plan for how this will be scaled-up in the coming years. This, coupled with a lack of progress in cross-Government action on food poverty more broadly, has resulted in the Government receiving a 'D' grade.

The inclusion of a related commitment to introduce a **Public Health Obesity Act** placing restrictions on promotion and advertising aimed at children is to be welcomed. While there was no movement in 2020 towards the introduction of the Act, this is in the context of a global health pandemic which is placing significant strain on the Department of Health and the health services. This has resulted in the Government being awarded a 'C' grade. The introduction of restrictions on the promotion of advertising to children can, as we have seen in the context of marketing restrictions in relation to alcohol, take a long time to progress. It is therefore vital that preparatory work on the Public Health Obesity Bill begins as a matter of priority to ensure that this commitment is fulfilled during the Government's term in office.

For the first time in six years, the rate of **family homelessness** declined considerably, and for this the Government receives a 'C' grade. Covid-19 measures, such as the ban on rental increases and eviction moratoriums contributed to a third fewer children experiencing homelessness at the end of 2020 compared to 2019. However, concerningly, some of these protections were lifted briefly in line with the opening of the economy, suggesting these measures are extraordinary and may be revisited once Ireland emerges from the pandemic. Aligned to this, while the Government has appointed a *High-Level Homelessness Taskforce* which will consider prevention and response to **youth homelessness** as part of its broader remit, no progress has specifically been made on strategy development. Seven months on from the commitment pledge, the lack of information on scope, departmental responsibilities and timeframes means the Government receives a 'D' grade for its work on the Youth Homelessness Strategy.

Reform of the international protection process and the **Direct Provision** reception system had been ongoing for several years, however, Covid-19 made clear the longstanding problems with institutional living and heightened the need for action. In this unprecedented external environment, the Expert Advisory Group led by Dr. Catherine Day, expedited their work, and a comprehensive final report was published in October. The Government receives a 'C+' given its public commitment to take forward the report's recommendations, including crucially the introduction of independent inspections and provision of own-door accommodation. Publication of the White Paper outlining the policy framework that will enable a shift to a non-profit, rights-based reception model and roll-out of vulnerability assessments

which have been mandatory in law since 2018 - but which have not been implemented - must be the priority for 2021.

There are an estimated 2,000 to 3,000 undocumented children living in Ireland who stand to benefit from the commitment to create new **pathways for long-term undocumented people and their children**. The Department of Justice has started drafting a policy paper on the regularisation of undocumented migrants and further progress is dependent on this. The Minister for Justice intends to consult with relevant Government departments, civil society, and other interested parties, before finalising the Scheme, which is expected to be launched in the second half of 2021. More progress is needed before a higher grade can be given, leading to a 'D' grade being awarded.

Addressing children's rights in the digital space, the Government committed to enact the Harassment and Harmful Communications Bill (as amended) to **outlaw image-based sexual abuse** and to prevent abusive sharing of intimate images online. The Act introduces new offences concerned with the recording and distributing of intimate images without consent and the publishing or sending of threatening messages or grossly offensive communication. The Act was signed into law in December 2020 and is yet to be commenced, resulting in a 'B' grade being awarded.

To ensure **children's safety online**, the Government committed to enact the Online Safety and Media Regulation Bill and establish an Online Safety Commissioner. While the Government published the finalised General Scheme of the Online Safety and Media Regulation Bill in December 2020, the Scheme does not specifically provide for the establishment of the Online Safety Commissioner or for an individual complaints mechanism for children and young people. This is in breach of children's right to an effective remedy. For these reasons, the Government receives a 'D-' grade.

One promising new commitment taken forward by the Government relates to **reform of the Family Law system**. Ireland does not have a separate, specialist family court system and the structure of the Family Law Courts has not been designed with the presence of children in mind and still lacks basic privacy for families. Some movement towards reform began in 2020: the Heads of the Family Law Court Bill were published providing for a new Family Court Structure and the establishment of a Family Justice Oversight Group. Plans

to develop the new Family Court complex in Dublin are expected to go to tender in 2021. These actions have led to a 'C' grade being awarded. It is of concern that the new Family Law System may take several years to implement, and therefore, it is key that this initial momentum is maintained to ensure it is delivered during the term of this Government.

Overall, there has been some significant progress throughout 2020, despite the challenging circumstances, but it is clear that for all of these 16 commitments to be fully realised throughout this Government's term, there is still much more work to do.



**Report Card 2021 represents our first collective opportunity to measure the Government's progress on its commitments and to ensure children's rights are safeguarded and promoted in this new Government's vision for Ireland.**

# Research Methodology

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Report Card 2021 is the first analysis of the progress for children under the new *Programme for Government: Our Shared Future*.

The Children's Rights Alliance reviewed all commitments related to children in *Our Shared Future* and selected 16 to track over the course of this Government's term in office. Commitments were shortlisted based on several core criteria:

- The commitment directly impacts children, defined as those under the age of 18.
- The commitment wording is clear and measurable.
- The commitment relates to one of the Alliance's strategic goals, or of our members.
- If achieved, the commitment has significant potential to improve the quality of life for children growing up in Ireland.

We sought to ensure that the commitments covered multiple different groups of children, including those who are marginalised; that they related to the whole of a child's development from infancy through to adolescence; and finally, that they spanned multiple different policy areas to reflect the broad range of issues that can affect children's lives.

The research approach comprised of detailed children's rights analysis of relevant legal and policy documents and academic literature which was then supplemented with insights and evidence gained from members and subject specialists. We engaged with relevant Government departments and statutory agencies to capture developments which happened between June 2020 to year end, as per our research timeframe. This enabled us to draw on the most up to date facts and figures when drafting each commitment section.

As in other years, members, Government officials and sector representatives had an opportunity to comment on our analysis, and once finalised, this went to an independent panel of experts for grading on the progress made from June to December 2020. Details of panel membership are contained in the acknowledgements section.



# Grades Table

Government Commitment, June 2020	Grade
Reform the childcare system	C
Establish a central agency, Childcare Ireland	D
Commence a free school books pilot	C-
Introduce national monitoring of reduced timetables	D-
Ensure each child with a special educational need has an appropriate school place	D
Undertake an independent assessment of the education inclusion pilot for Traveller and Roma children	D+
End the admission of children to adult psychiatric units	C
Address food poverty in children	D
Introduce a Public Health Obesity Act	C
Reduce the number of homeless families	C
Develop a National Youth Homelessness Strategy	D
End the Direct Provision system and replace it with a not-for-profit accommodation model	C+
Create new pathways for long-term undocumented people and their children	D
Enact the Harassment and Harmful Communications Bill	B
Enact the Online Safety and Media Regulation Bill and establish an Online Safety Commissioner	D-
Enact a Family Court Bill and build a new Family Court Building	C

## ⊕ Explanation of Grades:

**A:** Excellent, making a real difference to children's lives  
**B:** Good effort, positive results for children  
**C:** Satisfactory attempt, but children still left wanting  
**D:** Barely acceptable performance, little or no positive impact on children

**E:** Unacceptable, taking steps in the wrong direction, no positive impact on children

**F:** Fail, taking steps that undermine children's wellbeing

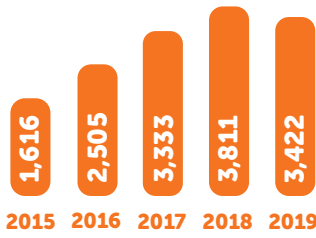
**N/A:** Not applicable, due to vague nature of Government commitment

# Key Facts & Statistics



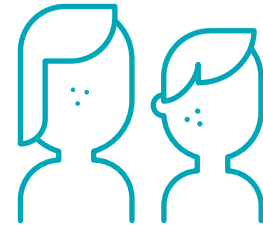
**1 in 4 children**

with disabilities placed on reduced timetables at school



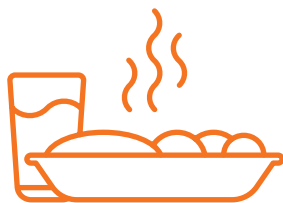
**2,452**

children homeless in Ireland as of end of 2020



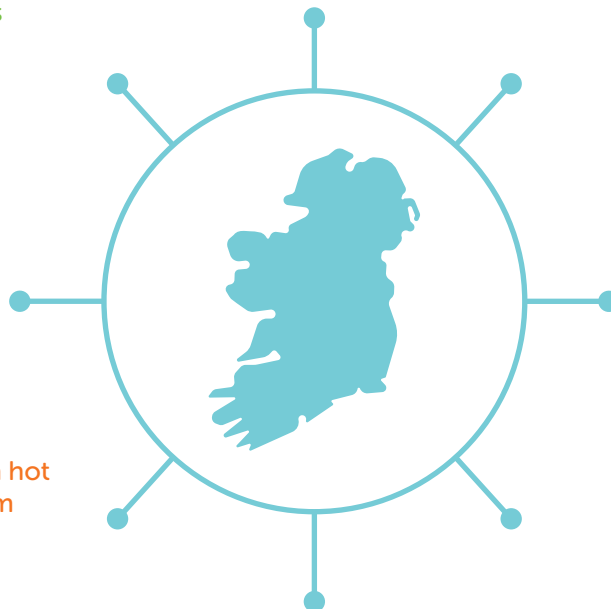
**Up to 3,000**

the estimated number of undocumented children in Ireland



**35,000**

children currently receiving a cold lunch in school will receive a hot meal with support from Budget 2021 funding



**1,137**

children in the direct provision system



**2,229**

young people on waiting list for child and adolescent mental health services (CAMHS) by December 2020



**Online Safety**

Harassment and Harmful Communications Bill signed into Law December 2020



**Free School Books**

15,500 children to benefit from Free School Books pilot scheme

**1**

# **Reform of the Early Childhood Education and Care System**

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**Section Grade:**

**C**



## The Programme for Government commits to:

Reform the childcare system to create one that brings together the best of community and private childcare provision, focused on children's rights, quality outcomes, reducing inequalities, supports staff retention as well as substantially reducing costs to parents. We will do so in consultation with providers, staff and parents.

---

▶ Progress: **Steady**

'Reform of the Early Childhood Education and Care system' receives a C grade. This is due to ongoing work including consultations on a Workforce Development Plan and a new funding model. These were positive developments but reports on both should be published in 2021 in order to progress reform. The Childminding Action Plan is also due for publication in 2021.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) calls for an understanding that early childhood is not merely preparation for adulthood and requires that children, including the very youngest children, be respected as persons in their own right.<sup>1</sup> While Article 5 recognises parents and carers as primary caregivers, Article 18 imposes a duty on States to provide assistance, including quality childcare services.<sup>2</sup> Article 2 clearly requires that no child should experience discrimination in early childhood and that all children should be able to access the vital services that contribute to their survival and development, in line with Article 6.<sup>3</sup> It is acknowledged that potential discrimination is a particular concern in cases 'where health, education, welfare and other services are not universally available and are provided through a combination of State, private and charitable organizations'.<sup>4</sup> Recognising that the traditional divisions between "care" and "education" services have not always been in children's best interests, the Committee recommends a coordinated, holistic, and multisectoral approach to early childhood.<sup>5</sup>

Ireland committed to promote, respect and protect children's rights when it ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of this, Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention. Ireland was last examined by the Committee on the Rights of the Child in 2016. At that time, the Committee did not make any general recommendations around the organisation of Ireland's childcare but did express concern that children with disabilities do not have adequate access to early childhood education services.<sup>6</sup> With regard to this group specifically, the Committee

1 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 15.

2 *ibid.*

3 *ibid* para 12.

4 *ibid.*

5 *ibid* para 30.

6 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 47c.

recommended that Ireland train and employ a sufficient number of specialised teachers to rectify this.<sup>7</sup>

## ► What's the context for this commitment?

The perinatal, infancy and early childhood period is a formative time for child development and wellbeing. There is clear evidence that experiences during these early years play a unique role in shaping a child's brain, with long-term consequences for health and wellbeing, as well as learning.<sup>8</sup> No other stage of life depends more on the external environment for growth and development.<sup>9</sup>

In the first few years of life, the brain is at its most flexible and rapidly developing through new experiences, with more than one million new neural connections formed every second.<sup>10</sup> A crucial element of healthy brain development is the nurturing of high-quality 'serve and return relationships' between children and caregiving adults in their homes and communities. To ensure all children can achieve their full developmental potential in line with their rights under Article 6 of the UNCRC, it is vital that all those in the ecosystem of early childhood education and care – parents or carers, wider family, and early years professionals – are equipped with the requisite knowledge and skills to foster these pivotal relationships.

While parents and caregivers hold primary responsibility, the wider system plays a very important role in supporting all children's healthy cognitive and socio-emotional development through interactive play and learning. While all children stand to benefit from high-quality early childhood education and care, it can be of particular value for more disadvantaged children by helping to redress inter-familial inequalities,<sup>11</sup> ensuring all children receive a

7 *ibid* para 48c.

8 Harvard Centre for the Developing Child, 'What Is Early Childhood Development? A Guide to the Science' <<https://bit.ly/3rj2M4x>> accessed 10 December 2020.

9 J Clinton, A Feller, R Williams, 'The importance of infant mental health' (2016) *Paediatrics & Child Health*, 21(5), 239–241.

10 Harvard Centre for the Developing Child, 'InBrief: The Science of Early Childhood Development' <<https://bit.ly/36Dvg0K>> accessed 10 December 2020.

11 Anna Pearce, Ruth Dundas, Margaret Whitehead and David Taylor-Robinson, 'Pathways to inequalities in child health' (2019) *Archives of Disease in Childhood*, 104:998–1003.

baseline level of developmental support irrespective of home circumstances and parenting capacity. This is particularly important because there is robust evidence to show that children who are disadvantaged at age three are at increased risk of disadvantage across the life cycle.<sup>12</sup> One of the longest running cohort studies in the world has found that children who were in high-risk groups at age three account for a disproportionately large economic burden by the time they are 38 years old, through overrepresentation on indicators such as hospital stays, injury insurance claims, welfare receipts and criminal convictions.<sup>13</sup> This highlights the importance of the provision of wrap-around support in early childhood, not only to safeguard children's rights in the present, but also to mitigate risk trajectories, yielding a significant long-term economic and social return.

Early childhood education and care (ECEC) is defined as non-parental care provided to children before they enter the formal education system and is also known as Early Learning and Care (ELC).<sup>14</sup> Ireland has the second lowest public spending on early childhood education and care in the Organisation on Economic Co-operation and Development (OECD), amounting to less than 0.5 per cent of Gross Domestic Product (GDP).<sup>15</sup> At present, the State provides subsidies directly to all providers of childcare services in an attempt to reduce the financial cost for parents and carers availing of services at market prices.<sup>16</sup> Public funding is only provided for programmes offered through providers registered with Tusla, the Child and Family Agency. Other forms of childcare such as childcare provided by relatives or unregistered childminders are not covered by publicly funded childcare subsidies or schemes.<sup>17</sup> The OECD is clear that if ECEC is not sufficiently subsidised, fewer children from

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12 A Caspi, RM Houts, DW Belsky, *et al.* Childhood forecasting of a small segment of the population with large economic burden, (2016) *Nature Human Behaviour*, 1.

13 *ibid.*

14 Parliamentary Budget Office, *Childcare in Ireland: An Analysis of Market Dynamics, Public Programmes and Accessibility*, (Houses of the Oireachtas 2019) 70.

15 OECD, 'OECD Family database PF3.1: Public spending on childcare and early education' <<https://bit.ly/3az4cRP>> accessed 21 January 2021.

16 See Government of Ireland, 'National Childcare Scheme', <<https://www.ncs.gov.ie/en/>> accessed 4 February 2021.

17 Parliamentary Budget Office, *Childcare in Ireland: An Analysis of Market Dynamics, Public Programmes and Accessibility*, (Houses of the Oireachtas 2019) 70.

disadvantaged backgrounds participate in it.<sup>18</sup> This echoes the concerns made by the UN Committee on the Rights of the Child in relation to discrimination in early childhood where the provision of services does not follow a universal model.<sup>19</sup>

In Autumn 2019, the Government acknowledged the importance of early childhood education and care, particularly for the most vulnerable children, and pledged to continue increasing investment in order to bring Ireland in line with OECD averages.<sup>20</sup> As part of the overall system reform, including reform to School-Age Childcare (SAC), the Government appointed an Expert Group to develop a set of principles on which childcare in Ireland should be based; to review the existing policy and approach against these principles and its effectiveness in delivering against objectives on quality, affordability, accessibility and contributing to addressing disadvantage; and finally drawing on international evidence, to consider how additional funding could be structured to deliver on the guiding principles and objectives.<sup>21</sup> The Expert Group will produce a final report including a proposed design for a new Funding Model, with accompanying costings, risk analysis and mitigation and a phased implementation plan.<sup>22</sup>

Notably, the Terms of Reference for this Expert Group state that it is not asked to propose changes to the current model of delivery (i.e. privately operated provision) but that it should seek to further achieve the policy objectives of quality, affordability, accessibility and contributing to addressing disadvantage in a privately-operated market through increased public funding and public management.<sup>23</sup>

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18 Dr Emily Heery, *Public provision of early childhood education: an overview of the international evidence* (Houses of the Oireachtas 2020) 3.

19 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 12.

20 Department of Children and Youth Affairs, 'Minister Zappone announces Expert Group to develop a new Funding Model for Early Learning and Care and School Age Childcare' Press Release, 18 September 2019 <<https://bit.ly/2YEo1Bk>> 10 December 2020.

21 *ibid.*

22 *ibid.*

23 Department of Children and Youth Affairs, 'Funding Model for Early Learning and Care and School Age Childcare Expert Group: Terms of Reference' <<https://bit.ly/3oKzwBV>> accessed 17 December 2020.



In parallel with the establishment of this group, the Government introduced the National Childcare Scheme (NCS) in November 2019, a new and progressive universal model for early childhood education and care in Ireland.<sup>24</sup> The NCS represents a first step towards reform of the system by streamlining all existing subsidies, except the Early Childhood Care and Education (ECCE) programme, into a more accessible and parent-friendly claim process. Under this new scheme, which sits alongside the ECCE programme, there are two types of childcare subsidy for children over six months of age:

- ▶ A **universal subsidy** for children under three years. Children over three who have not yet qualified for the ECCE are also eligible. This is not means-tested.
- ▶ An **income-assessed subsidy** for children up to fifteen years old. This is means-tested.<sup>25</sup>

Since its introduction, over 67,000 children have benefited from the NCS.<sup>26</sup> However, the closure of services in March 2020 due to Covid-19 abruptly halted the momentum that had been building to increase the uptake of the NCS. Pandemic-induced changes to work and family balance have affected usage of the Scheme, and since the reopening of services from 29 June 2020 onwards there has been reduced parental demand for full and part-time Early Childhood Education and Care, and School-Aged Childcare, due to unemployment, parents working remotely and more flexibly, and ongoing health concerns.<sup>27</sup>

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24 Department of Children and Youth Affairs, 'Minister Zappone launches communications campaign on the National Childcare Scheme' Press Release 23 September 2019 <<https://bit.ly/2XZJeFH>> accessed 21 January 2021.

25 Government of Ireland, 'National Childcare Scheme: Types of Subsidy', <<https://www.ncs.gov.ie/en/types-of-subsidy/>> accessed 4 February 2021.

26 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

27 *ibid.*

## ► What's been achieved for children so far?

The commitment in the Programme for Government builds on this work to date, outlining that it will bring together the best of private and community provision to deliver progress in five domains: children's rights; quality outcomes; inequalities; staff retention; and cost to parents. To facilitate auditing of progress against these indicators going forward, these five related areas are considered separately below.

### Children's rights

The UN Committee on the Rights of the Child recognises that young children, from birth, throughout infancy and during the pre-school years, are holders of all rights enshrined in the UNCRC.<sup>28</sup> The principle of non-discrimination applies and the State has a duty to ensure that no child is inhibited from accessing all their convention rights, due to their ethnicity, sex, religion, language, abilities or any other status, whatever they think or say, whatever their family background.<sup>29</sup> It is important to engage with young children in relation to any reforms as this has been done very successfully in 2016 with children aged five to 12 years old in relation to School-Age Childcare.<sup>30</sup> The Department should also build on, and update, the previous work of Start Strong which consulted with young children in 2011 and published a report on their visions and ideas for early care and education services.<sup>31</sup>

### Quality outcomes

Early childhood institutions, services and facilities must conform to quality standards as outlined by the UN Committee on the Rights of the Child.<sup>32</sup> This means that:

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28 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 1.

29 *ibid* para 12.

30 Department of Children and Youth Affairs, *Report of Consultations with Children on After-School Care* (Government Publications 2017).

31 Start Strong, *If I Had a Magic Wand* (Start Strong 2011).

32 UNCRC 'General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 28.

- ▶ Staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well-trained;
- ▶ Services are appropriate to the circumstances, age and individuality of young children and all staff must be trained to work with this age group;
- ▶ Work with young children is socially valued and properly paid to attract a highly-qualified workforce and staff should have an up-to-date theoretical and practical understanding about children's rights and development; and
- ▶ Staff use child-centred care practices, curricula and pedagogies, and have access to specialist professional resources and support, including a supervisory and monitoring system for public and private services.<sup>33</sup>

Global evidence reviewed by the OECD supports that smaller group sizes and child-staff ratios are related to higher process quality across the zero to five age range in centre-based care.<sup>34</sup> Most studies across the whole age range, and across different types of provisions, support that higher pre-service qualifications and additional in-service training or professional development is positively associated with process quality.<sup>35</sup>

Given this clear framework in international law and the robust evidence-base linking training and professional development to quality outcomes, it is welcome to see the new Government placing much needed focus on how best to develop a specialist early years workforce, accompanied by enhanced service delivery monitoring.

Almost two decades after the first ECEC model framework was introduced in 2002 starting the ongoing process of policy reform, a Workforce Development Plan is being finalised following public consultation.<sup>36</sup> This Plan seeks to move to a graduate-led workforce by 2028, in line with the target set in *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families*

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33 *ibid.*

34 Pauline Slot, *Structural characteristics and process quality in early childhood education and care: A literature review*, OECD Education Working Papers No. 176 (OECD 2018) 50-51.

35 *ibid.*

36 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

2019 – 2028.<sup>37</sup> An interim report on this is due to be prepared by Spring 2021, with a final report expected in Autumn 2021.<sup>38</sup> Work in 2021 is likely to include further consideration of a professional regulator.<sup>39</sup>

One area of concern is how the Workforce Development Plan considers childminders and what level of qualification they should be required to have. A Childminding Action Plan will be published in the early part of 2021, and in line with commitments in *First 5* and the Programme for Government, this will set out plans to extend regulation and subsidies to non-relative childminders, and to introduce – and support childminders to achieve – tailored minimum training requirements.<sup>40</sup> In addition to this, the Children's Rights Alliance believes that a child-centred approach necessitates a minimum professional qualification to ensure all children receive the right developmental support from a trained professional, and childminders should be required to have a minimum level qualification equivalent to that of other ECEC workers in early years settings.

If ambitious in scope and supported by sufficient resourcing, this Workforce Development Plan could support the professionalisation of the sector – however, pay and working conditions are outside of the scope of the plan.<sup>41</sup> This is of particular concern given that poor pay and working conditions are considered to be drivers of the current high staff turnover in early childhood education and care settings<sup>42</sup> (see Staff Retention section on p.34). The Plan does however provide a timely opportunity to consider elements of the current system which may be contributing to poor recruitment and retention.

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37 Government of Ireland, *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* (Government of Ireland 2018).

38 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

39 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

40 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

41 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

42 Joint Committee on Children and Youth Affairs, *Report on the Working Conditions of the Early Years Education and Care Sector 2017*, (Houses of the Oireachtas 2017) 27.



In addition to moving towards a graduate-led pedagogue workforce, the Government has also committed to streamline regulatory requirements for early childhood education and care settings whilst continuing to improve quality, and to ensure a transparent inspection reporting structure for parents and guardians.<sup>43</sup> An Operations and Systems Alignment Group (OSAG) that brings together relevant bodies concerned with inspection, audit and mentoring has been meeting regularly since 2015 to support the coordination and effective delivery of inspection, audit and mentoring functions.<sup>44</sup>

In driving up quality standards for early years childcare, through professionalisation and improved regulation and inspection, the role of the proposed new agency, Childcare Ireland, will be key – see commitment on p.39.

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43 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

44 *ibid.*

## Inequalities

The UN Committee on the Rights of the Child is clear that no child should experience discrimination in early childhood and all should be able to access the vital services that contribute to their survival and development.<sup>45</sup> However, it is well-documented that the high cost of formal early childhood education and care in Ireland is one factor which can preclude cohorts of children from accessing out of family support. European Commission research found that in Ireland, the participation rate of children from low-income families in formal childcare was less than a quarter of that of their high-income peers.<sup>46</sup> *First 5* committed to develop a Delivering Equality of Opportunity in Schools (DEIS) type model for early childhood education and care.<sup>47</sup> The Department of Children, Equality, Disability, Integration and Youth has confirmed this work is ongoing in the context of the new funding model.<sup>48</sup> This, coupled with the new National Childcare Scheme's progressive universal approach, could help redress socio-economic inequalities in access.

Similarly, for children with disabilities, access to developmentally appropriate and needs-based early childhood education and care can be challenging. While the Access and Inclusion Model (AIM) has helped support children with disabilities through a child-centred, progressive universal model, it is only available for pre-school children who are aged over two years and eight months.<sup>49</sup> Since eligibility for Government support under AIM is based on the needs of the child in the designated age range and the needs of the pre-school setting in which the child is participating, children with disabilities who attend formal childcare settings at a younger age may not receive sufficient support to enable them to develop in line with their peers. Under *First 5*, the Government committed to undertake an evaluation of AIM which is underway,

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45 UNCRRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 12.

46 European Commission, *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the development of childcare facilities for young children with a view to increase female labour participation, strike a work-life balance for working parents and bring about sustainable and inclusive growth in Europe (the "Barcelona objectives")* (EU Commission 2018) 19.

47 Government of Ireland, *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* (Government of Ireland 2018) strategic action 8.3.

48 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

49 Department of Children and Youth Affairs, 'AIM FAQs' <<https://aim.gov.ie/faqs/>> accessed 21 January 2021.



**...for children with disabilities, access to developmentally appropriate and needs-based early childhood education and care can be challenging.**

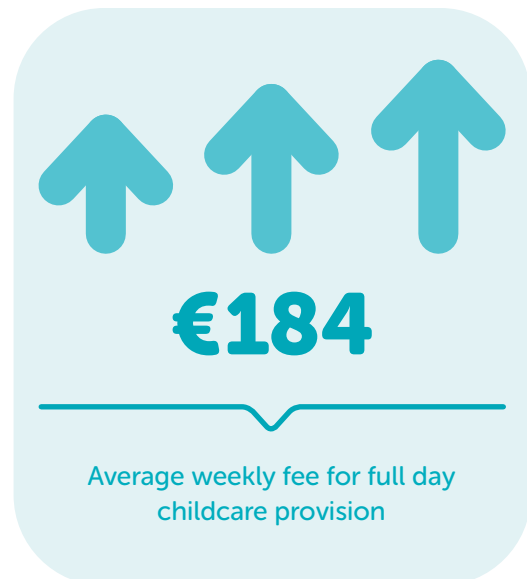
and this will support consideration of an expansion of AIM to other cohorts.<sup>50</sup>

In Autumn 2020, the Government progressed work to reform the funding model for ECEC and SAC through a consultation with key stakeholders and ongoing meetings with the Expert Group. Issues for consideration include affordability and approaches to identifying children and settings in need of additional support.<sup>51</sup> It is envisaged that a final report including a proposed design for a new Funding Model, with accompanying costings, risk analysis and mitigation and phased implementation plan will be presented to the Minister for Children, Equality, Disability, Integration and Youth for consideration in the final quarter of 2021.<sup>52</sup>

## Costs to parents

Childcare costs rose for the third consecutive year, with the average weekly fee for full day provision increasing to €184, an increase of €6 from the previous year.<sup>53</sup> Average fees are significantly higher in urban rather than rural areas, and in private rather than community services.<sup>54</sup>

The NCS aims to streamline and simplify the various existing subsidy schemes and help to address the relationship between material deprivation and unmet need; in 2016, 16 per cent of families in Ireland did not have all their childcare needs met.<sup>55</sup> Under this new Scheme parents



50 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

51 Department of Children and Youth Affairs, 'New Funding Model for ELC and SAC Expert Group Meeting Minutes Tuesday 23 September 2020' <<https://bit.ly/3re6TPk>> accessed 22 December 2020.

52 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

53 Pobal, *Annual Early Years Sector Profile Report 2018/2019* (Pobal 2019) 10-11.

54 *ibid.*

55 Economic and Social Research Institute, *Access to Childcare and Home Care Services across Europe* (ESRI 2019) 22-21.



with the least income will receive the highest subsidy rate in line with the principle of progressive universalism.<sup>56</sup> However, concerns have been raised that by tying eligibility for the new single targeted subsidy to participation in employment or training, some families, particularly one-parent households, may be disadvantaged.<sup>57</sup>

In January 2020, the former Minister, Dr Katherine Zappone TD, directed officials in her Department to undertake research and analysis to examine any adjustments to the NCS that might be required to address unusual cases, to protect and benefit lower-income parents. Arising from this research and analysis, in September 2020, the hours of entitlement were increased from 15 to 20 under the standard NCS hours, and from 40 to 45 under the enhanced NCS hours.<sup>58</sup> This is to be welcomed and should also support reduction in socio-economic inequalities while work on developing the DEIS-type model is ongoing.

Progress on affordability can be achieved by better understanding market pricing structures to ensure that government subsidies are set at the right level. In October 2020, the *Independent Review of the Cost of Providing Quality Early Learning and Childcare in Ireland* was published which will enable evidence-based policy making on the issue of affordability. This review found the average hourly unit cost for delivering ECEC across all services was €4.14 - with significant regional and service type variation - and will help inform the funding model and fair distribution of public funds.<sup>59</sup> The *Review* aided the development of a cost calculator which has already been used to inform the funding of closed services during Covid-19, and their phased reopening of services since 29 June 2020.<sup>60</sup> Having a better understanding of variations in service delivery costs enables the Government to consider how early childhood education and care can be delivered more efficiently to support

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56 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

57 See Children's Rights Alliance, *Report Card 2020*, (Children's Rights Alliance 2020) 111-112.

58 Communication received by the Children's Rights Alliance from Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

59 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman publishes Independent Review of the Costs of Providing Quality Early Learning and Childcare in Ireland', Press Release, 19 October 2020 <<https://bit.ly/2MWTxb7>> accessed 14 December 2020.

60 *ibid.*

participation across all income groups nationwide.

While the completion of this review is positive and the findings are able to inform future funding allocations, the budget allocation for 2021 for ECEC was not increased and remains the same as the 2020 allocation of €638 million.<sup>61</sup> This means that current payments under both the NCS and ECCE scheme remain unchanged. To drive down costs to parents and raise quality standards, it is vital that Budget 2022 addresses any shortfall and increases investment in this formative provision.

## Staff retention

The early years workforce is made up predominantly of women, with high staff turnover and considerable variation in wages pending on regional location.<sup>62</sup> Average annual turnover is approximately 23 per cent,<sup>63</sup> with the Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman TD, confirming that it rises to 40 per cent for workers in full-time only services.<sup>64</sup> A survey with early years professionals conducted in December 2020 shows that 76 per cent of educators and practitioners earn less than the living wage and 93 per cent of all respondents said they would leave the sector within five years if conditions did not improve.<sup>65</sup> Research with early years practitioners highlights that poor pay and conditions, coupled with perceived lack of respect for skills and expertise cause many to leave the profession.<sup>66</sup> Prior to embarking on the Workforce Development Plan in 2019, the Government also acknowledged that pay levels are likely contributing to the staff turnover rate but indicated that under the current privatised model the State is constrained in its capacity to introduce measures to improve terms and conditions of

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61 Department of Children, Equality, Disability, Integration and Youth, ‘Minister O’Gorman announces €121 million budget package’, Press Release, 14 October 2020 <<https://bit.ly/36IT6s5>> accessed 1 February 2021.

62 Pobal, *Annual Early Years Sector Profile Report 2018/2019* (Pobal 2019) 10-11.

63 *ibid.*

64 Minister for Children and Youth Affairs, Roderic O’Gorman, Dáil Debates, Written Answers, Early Years Sector 14 July 2020 [15784/20]./

65 SIPTU, *Early Years Professionals Survey* (SIPTU 2020) 7-10.

66 Joint Committee on Children and Youth Affairs, *Report on the Working Conditions of the Early Years Education and Care Sector 2017*, 27.

employment.<sup>67</sup>

The Covid-19 pandemic has rapidly changed this landscape given that the State effectively took over payment of the wages of early childhood education and care providers directly. The introduction of the Wage Subsidy Scheme between March and August 2020, and the subsequent Employment Wage Subsidy Scheme with special provision for childcare services in place until at least March 2021, are welcome developments. These measures have supported many childcare facilities to remain open despite the challenging circumstances. The government subsidy allowed employers, including childcare providers, to continue to pay their employees during the pandemic ensuring that workers received a stable and secure income.

This subsidy could form a first step towards a public system of early childhood education and care which recognises it as a public good that is reflected through a secure and stable wage for educators as part of a new social contract. To this end, Minister Children, Equality, Disability, Integration and Youth, Roderic O’Gorman TD, commenced discussions with IBEC and SIPTU in December 2020 to advance a Joint Labour Committee for childcare.<sup>68</sup>

These discussions, together with the development of the Workforce Development Plan and the establishment of Childcare Ireland as the central body responsible for training and professional development, have the capacity to stem the professional exodus and enable consistent, rights-based care for all children. It is crucial that these developments continue at pace in 2021.

## ► **What children need next**

Recent data shows that 99 per cent of children attending pre-primary education (aged three to five years) in Ireland were enrolled in private childcare

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67 Department of Children, Equality, Disability, Integration and Youth, 'Workforce Development Plan for the ELC/ SAC Sector Background Note and Draft Terms of Reference for the Steering Group' <<https://bit.ly/3pQpH6O>> accessed 22 December 2020.

68 SIPTU, 'SIPTU to discuss childcare professionals' pay with Minister for Children and IBEC' Press Release 10 December 2020, <<https://bit.ly/3pP5vIU>> accessed 22 December 2020.

institutions, compared to the OECD average of 34 per cent.<sup>69</sup> The final report on the design for a new Funding Model should explore the potential for a publicly funded model which would see the State establish ECEC as a public service, akin to primary education. Under this model, the State could contract existing private and community services to become part of an infrastructure that allows for central strategic management and local supports.

The aim of this would be to:

'...enable a focus on strengthening the quality, security, availability and accountability of Early Childhood Education and Care in Ireland, by facilitating monitoring of practice, enhancing data collection, providing security of employment, and inspiring confidence in parents that their children are safe, happy and well cared for, across the country'.<sup>70</sup>

A shift to a universally available public ECEC model could help achieve these goals and may boost affordability, accessibility and quality of childcare services, and enhance maternal and child well-being.<sup>71</sup> Countries which provide ECEC through public provision tend to have services which are more affordable, accessible and of higher quality than countries which rely heavily on private provision.<sup>72</sup>

A publicly funded model could help address the inequalities outlined above at a systemic level and would allow for the efficient and effective use of increased state investment resulting in significantly reduced costs for both providers and parents while increased employee pay would address the current recruitment and retention crisis, support professionalisation and enhance the overall quality of provision for children.<sup>73</sup>

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69 Dr Emily Heery, *Public provision of early childhood education: an overview of the international evidence* (Oireachtas Library & Research Service 2020) 1.

70 Inform, 'Act Now: Re-imagining Early Childhood Education and Care in Ireland: Submission for consideration for the Programme for Government' (Inform, May 2020).

71 Oireachtas Library and Research Service *L&RS Note: Public provision of early childhood education: an overview of the international evidence* (Houses of the Oireachtas 2020) 4.

72 *ibid* 1.

73 Inform, 'Act Now: Re-imagining Early Childhood Education and Care in Ireland 2020: Submission for consideration for the Programme for Government' (Inform May 2020) 2.

## ➔ **Recommendations:**

- ▶ Publish the final report on the Funding Model by the end of 2021.
- ▶ Explore the establishment of a publicly funded model of Early Childhood Education and Care (ECEC).
- ▶ Publish the Childminding Action Plan as a matter of priority.
- ▶ Recognise the key role that early childhood educators play in child development and the provision of quality ECEC by ensuring that their skills and abilities are reflected in any recommendations on remuneration in the forthcoming Workforce Development Plan.
- ▶ Ensure that the Workforce Development Plan and Childminding Action Plan recognise staff expertise with a focus on training and pathways for professional development to enable all children to receive consistent, high-quality care.
- ▶ Outline a plan for a phased increase in state investment in Early Childhood Education and Care to ensure that in the short-term Ireland is brought in line with the OECD average of 0.7 per cent of GDP, with a longer-term objective of moving closer to world leader, Iceland, which invests 1.8 per cent of GDP.

**2**

**Childcare  
Ireland  
Agency**

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**Section Grade:**

**D**



## The Programme for Government commits to:

Establish an agency, Childcare Ireland, to assist in the expansion of high-quality childcare, spearheading leadership, best practice and innovation and professional development in community and private settings. It will also be tasked with developing career paths for childcare staff. Childcare Ireland will be responsible for expanding Síolta.

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▶ Progress: **Slow**

‘Establish Childcare Ireland’ receives a D grade. While preliminary work has begun for the establishment of the body, progress to date has been slow. Furthermore, it is not clear what elements of reform will be included in the remit of the body and if it will incorporate the necessary inspection process.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) highlights that early childhood is not merely preparation for adulthood and requires that children, including the very youngest children, be respected as persons in their own right.<sup>1</sup> While Article 5 recognises parents and carers as primary caregivers, States have a duty to provide assistance, including quality childcare services under Article 18.<sup>2</sup> Article 2 provides that no child should experience discrimination in early childhood and all should be able to access the vital services that contribute to their survival and development, in line with Article 6.<sup>3</sup> Children's best interests are always the starting point for service planning and provision,<sup>4</sup> and it is essential that the 'institutions, services and facilities responsible for early childhood conform to quality standards ... and that staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well trained.<sup>5</sup> Work in early years education and care should be socially valued and properly paid, in order to attract a highly qualified workforce: men as well as women.<sup>6</sup>

Ireland ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of its commitments, Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention. The State was last examined by the Committee on the Rights of the Child in 2016. At that time, the Committee did not make any general recommendations about early childhood care and education in Ireland but did express concern that children with disabilities do not have adequate access to early childhood education services. With regard to this group specifically, the Committee

1 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 15.

2 *ibid.*

3 *ibid* para 12.

4 *ibid* para 22.

5 *ibid* para 23.

6 *ibid.*



recommended that Ireland train and employ a sufficient number of specialised teachers to rectify this.<sup>7</sup>

## ► What's the context for this commitment?

The Programme for Government pledges significant reform of early childhood education and care (ECEC) – see Section 1 on reform of the early childhood education and care system – and a central aspect of this is the establishment of Childcare Ireland.<sup>8</sup> While both ECEC, and School-Age Childcare (SAC) will likely fall under the remit of the proposed Agency,<sup>9</sup> Report Card 2021 focuses specifically on the impact that a central agency could have for ECEC in line with the strategic objectives of the Children's Rights Alliance.

At present, oversight and governance of early childhood education and care is spread across several different bodies operating at city, county and national level.<sup>10</sup> As an overarching body, Childcare Ireland (the Agency) is expected to streamline the system by coordinating all existing early years functions, including inspection, funding, quality and planning. It will also support staff training and development, ensuring consistent quality of care for children at this key developmental stage, irrespective of setting type or geographical location.

## Monitoring and oversight

The commitment to establish Childcare Ireland is welcome as there is an urgent need to align policy, practice and inspection in the ECEC sector. Ireland currently deploys a market-based model of early childhood education and care using state subsidies, capitation and regulation, rather than a public model of funding and provision. In market systems, market forces and consumerist approaches often shape the provision of formal early childhood

7 UN CRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 47c and 48c.

8 Government of Ireland, *Programme for Government, Our Shared Future* (Government of Ireland 2020) 80.

9 Communication received by the Children's Rights Alliance from the the Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

10 Jack Horgan Jones, 'New childcare agency will bring 'fragmented' sector together' *The Irish Times*, 27 July 2020.

education and care<sup>11</sup> meaning that there may not be a consistent approach to ECEC employed in all settings. One of the key aspects of the Irish system is the 'current disparity in approaches between provision for 0-3 and 3-6 year olds';<sup>12</sup> services for the older cohort are considered 'early education' and are subject to both inspections by Tusla, the Child and Family Agency and the Department of Education and Skills, while services for children under three are considered 'childcare' and are subject only to Tusla inspections.<sup>13</sup>

Exacerbating this, the current fragmentation of monitoring and evaluation generates multiple 'inspection' visits that can result in duplication and inefficiencies as well as systems that are confusing for providers, parents and stakeholders.<sup>14</sup>

*First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* aims to 'integrate and coordinate inspection and quality supports, building on the existing practice between the Inspectorates and Better Start's National Quality Development Service';<sup>15</sup> and while recent years have seen advances in coordination between the Department of Children and Youth Affairs and the Department of Education and Skills,<sup>16</sup> overall, the sector remains fragmented.

Establishing Childcare Ireland would help to provide a more cohesive approach to provision of services and could enable coordinated joint inspections. The Agency should be designed in line with Ireland's duties

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- 11 Martha Friendly, *A bad bargain for us all: Why the market doesn't deliver child care that works for Canadian children and families* (Childcare Resource and Research Unit, May 2019) <<https://bit.ly/3cQYfIE>>, accessed 21 January 2021, 5.
- 12 Government of Ireland, *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* (DCYA 2018) 107.
- 13 Toby Wolfe, Bernie O'Donoghue Hynes and Noirin Hayes, 'Rapid Change without Transformation: The Dominance of a National Policy Paradigm over International Influences on ECEC Development in Ireland 1995–2012', (2013) *International Journal of Early Childhood* 45(2).
- 14 Early Childhood Ireland, 'Rising to the Challenge: Budget 2020 Submission' (2019) <<https://bit.ly/3cW4nth>> accessed 5 February 2021.
- 15 Government of Ireland, *First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019 – 2028* (Government of Ireland 2018) 108.
- 16 An Operations and Systems Alignment Group (OSAG) established by the former Department of Children and Youth Affairs comprises representatives from the Department of Education and Skills Inspectorate, Tusla's Early Years Inspectorate, Pobal, and the Better Start National Quality Development Service, managed by Pobal on behalf of the Department of Children and Youth Affairs. Memoranda of Understanding (MoU) were signed in 2018 to support coordination between the DES Inspectorate and Tusla's Early Years Inspectorate, as well as between Tusla's Inspectorate and Better Start Quality Development Service. See Children's Rights Alliance, Report Card 2020 (CRA 2020) 106.

under the UNCRC which specifies that 'a comprehensive framework for early childhood services, provisions and facilities is required, backed up by information and monitoring systems'.<sup>17</sup> In this regard, Childcare Ireland should oversee a coordinated and integrated inspectorate which enables safeguarding inspections undertaken by Tusla and pedagogical inspections undertaken by the Department of Education to be aligned.

In addition to streamlining and coordinating inspections, establishing an agency of this type could help the State to fulfil its UNCRC commitments to 'collect up-to-date quantitative and qualitative data on all aspects of early childhood for the formulation, monitoring and evaluation of progress achieved, and for assessment of the impact of policies'.<sup>18</sup>

## Staff development and training

Just as the Agency will be crucial for enabling a cohesive and coordinated approach to delivery of services and their inspection, so too will it play a vital role in raising the quality of existing ECEC. A key tenet of a rights-based early years system is that staff possess the appropriate psychosocial qualities and that they are suitable, sufficiently numerous and well-trained.<sup>19</sup>

Under international law, all States that ratify the UNCRC have a duty to ensure that work during early childhood is 'socially valued and properly paid, in order to attract a highly qualified workforce, men as well as women'.<sup>20</sup> This means that all staff working in this field in Ireland must:

- ▶ Have a sound, up-to-date theoretical and practical understanding of children's rights and development;
- ▶ Adopt appropriate child-centred care practices, curricula and pedagogies; and
- ▶ Provide access to specialist professional resources and support, including a supervisory and monitoring system for public and private programmes,

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17 UNCRC, General Comment No.7: Implementing child rights in early childhood' (2006) UN Doc CRC/C/G/GC/7/Rev.1 para 22.

18 *ibid* para 39.

19 *ibid* para 23.

20 *ibid*.

institutions and services.<sup>21</sup>

Establishing a central body provides the State with the opportunity to underpin the training and professional development of early years educators in children's rights as set out by the Committee on the Rights of the Child. Taking this forward will necessitate a whole-of-Government approach premised on cooperation and collaboration, particularly between the Department of Children, Equality, Disability, Integration and Youth; Tusla, the Child and Family Agency; and the Department of Education.

## ► **What's been achieved for children so far?**

As a precursor to the establishment of Childcare Ireland, the Department of Children, Equality, Disability, Integration and Youth is embarking on a comprehensive review of the operating system that administers all Early Learning and Care and School-Age Childcare (SAC) schemes and initiatives. The commitment to undertake this review was outlined in *First 5*.<sup>22</sup>

The review of systems and structures is now underway, supported by an oversight group that is made up of internal senior Department officials and interdepartmental representatives along with two independent experts in change management and agency establishment.<sup>23</sup> To enable an integrated and systemic approach to reform the childcare system, some of these officials also sit on the Expert Group on a new Funding Model, the Workforce Development Plan, and the Review of the Operating System. The Department has also committed to engage with relevant stakeholders during the process.<sup>24</sup>

The review's objective is to ensure that the operating system is fit for purpose to implement departmental policy relating to quality, affordability and access of Early Learning and Care and SAC, to the scale and standards required in an

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<sup>21</sup> *ibid.*

<sup>22</sup> Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

<sup>23</sup> Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2020.

<sup>24</sup> Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

evolving and expanding sector.<sup>25</sup>

As part of this preliminary work, an analysis of the current landscape and consideration of options for change is being undertaken by an external contractor, Indecon, and work has been underway since December 2020.<sup>26</sup> The review project is due to conclude in the Autumn of 2021 and will inform a decision concerning the establishment of Childcare Ireland and the range of functions it may provide.<sup>27</sup> It is of particular concern that the scope of the review project does not include Tusla or the Department of Education and their inspectorates given the urgent need for Childcare Ireland to develop a cohesive approach to inspection coordination.<sup>28</sup>

## ► **What children need next**

While clear preliminary progress is being made, it is vital that decisions surrounding the establishment of the Agency are not delayed. To ensure that work progresses, a steering group should be established. This could draw from, or overlap with, members of the existing oversight group for the review project on systems and structures to ensure that there is cohesion between the two groups. This steering group could progress work on the design and remit of the Agency, working collaboratively with the Funding Model expert group and the Workforce Development Plan steering group while these are still in operation. All work should be informed by the standards set out under the UNCRC on rights in early childhood.

Aligned to this, as well as overseeing expansion of *Síolta: the National Quality Framework for Early Childhood Education*, the Agency must also give due consideration to *Aistear: the Early Childhood Curriculum Framework*. As the National Council for Curriculum and Assessment (NCCA) acknowledge,

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25 *ibid.*

26 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

27 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 6 November 2020.

28 Department of Children and Youth Affairs, 'Presentation of the Review of the Early Learning and Care (ELC) and School Age Childcare (SAC) Operating System and Structures to County/City Childcare Committees & National Voluntary Childcare Organisations' 1 October 2020.

these two frameworks cover separate but complementary grounds.<sup>29</sup> *Síolta* focuses on all facets of quality within ECEC settings including learning and development while *Aistear* helps adults provide developmentally appropriate learning experiences for children from birth to six years.<sup>30</sup> Given a core aspect of Childcare Ireland's proposed function is to provide oversight of staff training and development, it is critical that its remit is clarified to ensure it is inclusive of *Aistear* too, which at present falls under the NCCA. The Agency should also hold responsibility for applying, and updating when necessary, the Diversity, Equality and Inclusion Charter and Guidelines for ECEC.<sup>31</sup>

### ➔ **Recommendations:**

- ▶ Continue to engage in the preparatory work to establish Childcare Ireland in 2021 by establishing a steering group with clear terms of reference and set timelines of tasks for completion.
- ▶ Ensure that inspections and oversight fall into the remit of Childcare Ireland and work towards developing a coordinated and integrated inspectorate to ensure quality and consistency across the Early Childhood Education and Care sector.

29 National Council for Curriculum and Assessment, *Aistear: the Early Childhood Curriculum Framework and Síolta, The National Quality Framework for Early Childhood Education Audit: Similarities and differences* (NCCA 2009).

30 *ibid.*

31 Department of Children and Youth Affairs, *Diversity, Equality and Inclusion Charter and guidelines for Early Childhood Education and Care* (DCYA 2016).

**3**

# Free School Books

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Section Grade:

**C-**



## The Programme for Government commits to:

Commence a free school books scheme pilot in September 2020 and, pending a successful review of that pilot, expand the scheme to schools nationwide, as resources allow.

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▶ Progress: **Some**

**'Free school books' receives a C- grade. This is due to the commencement of the pilot scheme for the school year 2020/21. However, the size of the pilot scheme is limited and there has been no provision made in Budget 2021 for its continuation. Further, there are no clear timelines in place for the completion of the review of the pilot and further roll out of the scheme.**



## Ireland's duties and responsibilities in international law



Under the UN Convention on the Rights of the Child (UNCRC), every child has a right to education and should have an equal opportunity to participate in education.<sup>1</sup> States should 'take appropriate measures such as the introduction of free education and offering financial assistance in case of need'.<sup>2</sup>

The UN Committee on the Rights of the Child has stated that the goal of education is to 'empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence'.<sup>3</sup> The Committee has recommended that education should go beyond formal schooling to 'embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society'.<sup>4</sup>

### ► What's the context for this commitment?

Every child in Ireland has the right to access and receive an education. The Irish Constitution requires the State to 'provide for free primary education'.<sup>5</sup> The Courts have interpreted this as placing no obligation on the State to educate children directly but it discharges its obligation by providing financial assistance including paying teachers, providing buildings, providing school transport and prescription of minimum standards.<sup>6</sup> In the case of *Sinnott v. Minister for Education* the Supreme Court held that this right is confined to children under the age of 18.<sup>7</sup> The Education Act 1998 sets out that children should receive 'a level and quality of education appropriate to meeting the

1 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989) Art 28.

2 *ibid* Art 28(b).

3 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 2.

4 *ibid*.

5 Irish Constitution, Article 42.4.

6 *Crowley v Ireland* [1980] IR 102, Kenny J at 126.

7 [2001] 4 I.R. 545.

needs and abilities of that person<sup>8</sup> and guarantees 'to promote equality of access to and participation in education and to promote the means whereby students may benefit from education'.<sup>9</sup> The UNCRC goes further in its wording calling on States to take steps to achieve the right to education on the 'basis of equal opportunity' and to 'take appropriate measures such as the introduction of free education and offering financial assistance in case of need'.<sup>10</sup>

Education has the power to transform lives, lift people out of poverty and break down cycles of disadvantage.<sup>11</sup> In Ireland, a person's socio-economic background remains a strong determining factor of their level of educational attainment. A person is almost three times more likely to go on to higher education if their parents have higher education than someone whose parents have not completed primary-level education.<sup>12</sup> Living on a low income can also prevent children and young people from participating fully in education.<sup>13</sup> The *EU Recommendation on Investing in Children* recommends that the State 'provide for the inclusion of all learners, where necessary by targeting resources and opportunities towards the more disadvantaged'.<sup>14</sup> It further recommends that the State take measures to address barriers which hinder children attending school, including financial barriers, by providing targeted educational aid.<sup>15</sup>

## Cost of education

Just under half of parents at primary level are able to meet the costs of returning to school out of their regular household budget, while only one third

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8 Education Act 1998, s6(b).

9 *ibid* s6(c).

10 UN General Assembly, Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 28(1).

11 Department of Employment Affairs and Social Protection *Roadmap for Social Inclusion 2020-2025* (DEASP 2020) 48.

12 Central Statistics Office, 'Census of Population 2016 – Profile 10 Education, Skills and the Irish Language' (CSO 2016) <<https://bit.ly/2FJtGyG>> accessed 12 January 2021.

13 Joint Committee on Education and Skills *Report on education inequality and disadvantage and barriers to education* (2019) <<https://bit.ly/33k4OXz>> accessed 11 September 2020.

14 European Commission, *Commission Recommendation of 20.2.2013: Investing in children: breaking the cycle of disadvantage* (Brussels, 20.2.2013 C(2013) 778 final) <<http://ec.europa.eu/social/main.jsp?catId=1060&langId=en>> accessed 12 January 2021.

15 *ibid*.

of parents at second level can do likewise, demonstrating the financial strains on households due to the cost of education.<sup>16</sup> In 2020, the Irish League of Credit Unions reported that 27 per cent of parents say they have incurred debt to pay for schools costs.<sup>17</sup> On average, parents had to spend €397 to cover the cost of returning to school, an increase of €40 from 2019.<sup>18</sup> The Barnardos Back to School Costs survey 2020 highlights the basic back to school costs parents face:<sup>19</sup>

	Senior Infants Pupil	4th Class Pupil	1st Year Student
Uniform (including footwear)	€120	€130	€235
School books and stationery	€95	€115	€285
Classroom resources	€40	€40	€75
Voluntary contribution	€75	€80	€140
<b>Total</b>	<b>€330</b>	<b>€365</b>	<b>€735</b>

The average cost of primary school books is €110, while the average cost of secondary school books is €225.<sup>20</sup> It is estimated that it would cost an additional €103 million annually to deliver free primary education and €127 million to deliver free second level education to every child and young person in Ireland.<sup>21</sup> This investment would cover all textbooks and workbooks, remove the need for voluntary contributions, classroom resources fees, transport fees

16 Barnardos *The real cost of school 2020 Back to School Briefing Paper* (2020) <<https://bit.ly/3bTtES1>> accessed 8 December 2020.

17 Irish League of Credit Unions, 'ILCU survey shows marked increase in average debt of parents coping with Back to School costs' <<https://www.creditunion.ie/news/latest-news/ilcu-survey-shows-marked-increase-in-average-debt/>> accessed 8 December 2020.

18 Irish League of Credit Unions, 'ILCU survey shows marked increase in average debt of parents coping with Back to School costs' <<https://www.creditunion.ie/news/latest-news/ilcu-survey-shows-marked-increase-in-average-debt/>> accessed 8 December 2020.

19 Barnardos *The real cost of school 2020 Back to School Briefing Paper* (2020) <<https://bit.ly/3bTtES1>> accessed 8 December 2020, 1.

20 *ibid* 24.

21 *ibid*, 31.

(for those availing of the School Transport Scheme) and restore the capitation rates back to 2010 levels. Measures have been taken to restore approximately 40 per cent of the capitation grant to the 2010 levels with budget increases provided for in Budgets 2019 and 2020.<sup>22</sup>

As far back as 2013, the then Joint Oireachtas Committee on Education and Social Protection called for a 'five-year template for the delivery of an entirely free school book system, based on the UK model' and to discontinue the use of workbooks in all schools.<sup>23</sup> The UK model has been in place since the 1940s.<sup>24</sup> Unfortunately, the Committee's recommendation has still not been implemented.

The Department of Education (DES) provides a grant to schools to provide assistance for books which includes school book rental schemes. In 2017, it issued a circular to management boards to take measures to reduce school costs including the setting up of book rental schemes.<sup>25</sup> It views the schemes as being cost effective and estimates that parents can save up to 80 per cent of book costs.<sup>26</sup> However, there is conflicting data on the availability of these schemes. The DES data states that 96 per cent of primary schools and 69 per cent of post primary schools operate a book rental scheme.<sup>27</sup> According to the Barnardos School Costs Survey 2020, 76 per cent of primary school parents had access to a school book rental scheme, while only 41 per cent of secondary school parents had access to a school book rental scheme.<sup>28</sup> One key issue is that funding is allocated towards the purchase of books but does

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22 Budget 2019 provided for a five per cent increase in capitation funding and Budget 2020 provided for a further two and a half per cent increase. Communication received by the Children's Rights Alliance from the Department of Education on 12 January 2021.

23 Joint Committee on Education and Social Protection, *Report on Tackling Back to School Costs* (Houses of the Oireachtas 2013) 20.

24 Butler Act 1945.

25 Department of Education and Skills, 'Circular 0032/2017: Measures to be adopted by schools to reduce the cost of school uniforms and other costs' (DES 2017).

26 Department of Education and Skills, *Guidelines for Developing Textbook Rental Schemes in Schools*, (2012) 5.

27 Communication received by the Children's Rights Alliance from the Department of Education 12 January 2021.

28 Barnardos *The real cost of school 2020 Back to School Briefing Paper* (2020) <<https://bit.ly/3bTtES1>> accessed 8 December 2020, 25.

not take into account the necessary staff time to administer the scheme.<sup>29</sup> Moreover, parents still have to pay a contribution to the scheme which does not completely remove the financial pressure that many low-income families experience at back-to-school time.

## ► **What's been achieved for children so far?**

Budget 2020 provided €1 million for the development of a new pilot to provide free school books to 102 primary schools for the school year 2020/21,<sup>30</sup> amounting to just over three per cent of all primary schools. The aim of this pilot is to provide free school books for students in the schools involved, and to support these schools in eliminating the cost of school books for parents.<sup>31</sup> The scheme was made available for Delivering Equality of Opportunity in Schools (DEIS) designated schools and will benefit 15,500 children.<sup>32</sup> The additional funding was issued to the participating schools in May 2020 and will provide an additional €64 per student to increase the overall book grant given to DEIS schools to €85 per student.<sup>33</sup>

## ► **What children need next**

The Programme for Government committed to 'Commence a free school books scheme pilot in September 2020 and, pending a successful review of that pilot, expand the scheme to schools nationwide as resources allow'.<sup>34</sup>

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29 Teachers Union of Ireland, *Textbook Grants and Book Rental Schemes – Department of Education and Skills Draft Guidelines and Report for Consultation: Teachers' Union of Ireland (TUI) Observations - June 2012*, <<https://bit.ly/2GH84T3>> accessed 8 December 2020.

30 Department of Education 'Minister McHugh announces additional funding of €1 million to reduce the cost of school books in DEIS schools' (January 2020) <<https://bit.ly/3c4wfLg>> accessed 10 December 2020.

31 Communication received by the Children's Rights Alliance from the Department of Education, 11 November 2020.

32 *ibid.* For full list of schools see Department of Education 'School Book Pilot Scheme 2020' <<https://bit.ly/2Y1CtDo>> accessed 10 December 2020.

33 Department of Education 'Minister McHugh announces additional funding of €1 million to reduce the cost of school books in DEIS schools' Press Release, 9 January 2020 <<https://bit.ly/2Y3Vtkv>> accessed 10 December 2020.

34 Government of Ireland, *Programme for Government, Our Shared Future*, 96.

The pilot, which commenced in September 2020 will run for one academic year following which the DES will review the effectiveness of the scheme and monitor and evaluate the impact before making a decision on its extension and continuation.<sup>35</sup> The size of the pilot was quite limited and there was no provision made in Budget 2021 for the possible continuation of the scheme. There is currently no timeline for the review of the scheme and if a decision will be made on further roll-out. The DES issued a template to schools last May to record and gather information on how the additional book grant funding has been used in each school which will be used to evaluate the effectiveness of the pilot.<sup>36</sup> It is important that the learnings from the pilot are used as a tool to inform wider systemic change. It is critical as we move towards planning for the 2021/22 academic year that the Department completes the review of the scheme as a matter of urgency.

In the 2019/2020 school year there were 3,243 Primary Schools and 723 Post-Primary Schools in the State, of these 689 Primary and 198 Post-Primary are categorised as DEIS.<sup>37</sup> Research indicates that a large proportion (up to 50 per cent) of disadvantaged students attend non-DEIS schools.<sup>38</sup> The UNCRC is clear that children have a right to education on a basis of equal opportunity and that the State has an obligation to offer financial assistance in the case of need.<sup>39</sup> The review of the pilot scheme should take into account the large proportion of disadvantaged students in non-DEIS schools and consider extending the scheme beyond only DEIS schools.

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35 Communication received by the Children's Rights Alliance from the Department of Education 11 November 2020.

36 Communication received by the Children's Rights Alliance from the Department of Education, 11 January 2021.

37 Communication received by the Children's Rights Alliance from the Department of Education, 11 November 2020.

38 Emer Smyth, Selina McCoy and Gillian Kingston, Learning from the Evaluation of DEIS (ESRI 2015).

39 UN General Assembly, Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 28(1).

## ➔ **Recommendations**

- ▶ Complete the review of the pilot scheme as a matter of priority.
- ▶ Set clear numeric targets to scale-up the pilot so this is transparent and to allow progress to be measured year-on-year with specific targets for DEIS and non-DEIS schools.

4

# Reduced Timetables

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Section Grade:

**D-**





## The Programme for Government commits to:

Ensure robust data collection on the use of reduced timetables. Ensure that reduced timetables are only used in a manner that is limited, appropriate and absolutely necessary in line with the Department of Education's rules.

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▶ Progress: **Slow**

**'Reduced Timetables' receives a D- grade. This is due to the lack of progress on issuing finalised guidelines to schools, the absence of information on the data collection procedure and the lack of monitoring to ensure new guidelines are adhered to. This is of particular concern given that evidence suggests that vulnerable and marginalised children are disproportionately more likely to be placed on a reduced timetable.**

## Ireland's duties and responsibilities in international law



Under the UN Convention on the Rights of the Child (UNCRC) which Ireland ratified in 1992, every child has a right to education and the UN Committee on the Rights of the Child is clear that the overall objective of this right is to maximise the child's ability and opportunity to participate fully in their society.<sup>1</sup> Under Article 2 of the UNCRC, States are obliged to ensure that all children can access all their Convention rights in full, without discrimination. In an education context, the Committee on the Rights of the Child is clear that discrimination 'offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.'<sup>2</sup>

The right to education also forms part of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) which Ireland ratified in 2018. This Convention, in Article 24, is clear that children with special educational needs have a right to individualised support and reasonable accommodations to enable their effective participation in the general education system.<sup>3</sup>

In considering the features of inclusive education, the UN Committee on the Rights of Persons with Disabilities has noted that persons with disabilities and their families (when appropriate) must be recognised as partners and not merely as recipients of education.<sup>4</sup>

Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion.<sup>5</sup>

1 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12.

2 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 10.

3 UN Convention on the Rights of Persons with Disabilities A/RES/61/106 Art 24.

4 Committee on the Rights of Persons with Disabilities, 'General Comment No. 4, Article 24: Right to inclusive education' (2016) UN Doc CRPD/C/GC/4. Para 32.

5 *ibid*, para 11.

Ireland will be examined on its progress against the UNCRPD in 2021 and was last examined by the Committee on the Rights of the Child in 2016. At that time, the Committee on the Rights of the Child expressed several concerns relating to education rights, including the lack of a comprehensive strategy for the inclusion of children with disabilities in mainstream education<sup>6</sup> and the structural discrimination against Traveller and Roma children.<sup>7</sup>

The Committee advocated a human rights-based approach to disability and children belonging to minority groups, and specifically recommended that Ireland: <sup>8</sup>

- ▶ Train and employ a sufficient number of specialised teachers and professionals in order to provide special needs education support and early childhood education for children with disabilities;
- ▶ Establish a clear and objective framework to ensure that children with disabilities are provided with reasonable accommodation for their education needs, including in the context of state examinations.
- ▶ Undertake concrete and comprehensive measures to address the structural discrimination against Traveller and Roma children, in particular with regard to access to education.

## ▶ **What's the context for this commitment?**

The Department of Education defines reduced timetables as:

- ▶ a reduced day in school where, by arrangement with the school authorities, a student arrives to school after the usual starting time or leaves before the end of the school day, and/or,

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6 *ibid*, para 47a.

7 UNCRRC, 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4. Para 69.

8 *ibid*, para 48 and 70.

- ▶ a reduced week where a student may not attend the full five days each week.<sup>9</sup>

Critically, the practice is distinct from a formal suspension and is not subject to any of the safeguards under the Education Welfare Act 2000 whereby an appeal can be made to the Department of Education when a school has expelled, suspended or refused to enrol a child.<sup>10</sup> The lack of safeguards and a formal system for recording the use of reduced timetables interferes with the constitutional right of a child under Article 42.3.2 to receive a certain minimum standard of education. While the Courts have been reluctant to define what constitutes a minimum standard of education,<sup>11</sup> the use of reduced timetables without any procedural safeguards and fair procedures is of concern.

In recent years, there has been growing unease that schools' use of reduced timetables is infringing the education rights of children, with this practice disproportionately affecting children with special educational needs and disabilities; children of Traveller and Roma heritage; and children who are experiencing trauma or adversity.<sup>12</sup> Given the absence of national reporting requirements, it is unclear exactly how many children are affected by this, however, research conducted with almost 400 parents found that one in four children with a disability have been put on short school days.<sup>13</sup> A national school study published in 2020 has revealed that approximately 24 per cent of schools reported children being placed on reduced hours.<sup>14</sup>

While there has been a welcome increase in educational psychologists employed in Irish schools over the past five years, current provision is just 221

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9 Department of Education and Skills, 'Minister for Education and Skills invites education partners to give views on proposed guidelines on reduced timetables' Press Release, 23 September 2019 <<https://bit.ly/36huLJM>> accessed 5 October 2020.

10 Ombudsman for Children's Office, 'Guidelines for reduced timetables should prevent practice being used as informal suspension' – Ombudsman for Children, Press Release 24 September 2019 <<https://bit.ly/3iPAA6l>> accessed 5 October 2020.

11 For more see section 5 on the Constitutional Right to Education for Children with Special Educational Needs.

12 Joint Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables* (Houses of the Oireachtas 2019).

13 Deborah Brennan and Harry Browne, *Education, Behaviour and Exclusion The experience and impact of short school days on children with disabilities and their families in the Republic of Ireland*, (Inclusion Ireland and Technological University Dublin 2019).

14 Dymphna Devine et al. *Children's School Lives: An Introduction, Report No.1*, (University College Dublin 2020) 17.

posts<sup>15</sup> to support students in close to 4,000 primary and secondary schools.<sup>16</sup> Similarly, while the Department of Education has issued guidance to all schools on the provision of a continuum of support ranging from prevention and early intervention to targeted and individual level supports to meet the needs of all children in schools,<sup>17</sup> existing evidence suggests that schools are using reduced timetables as a behaviour management mechanism.<sup>18</sup> There is little recognition that challenging behaviour or poor emotional regulation can be an indicator that a child is experiencing toxic stress and has unmet needs.<sup>19</sup> This is of particular concern given that mental and emotional health problems can be compounded by the experience of exclusion from formal schooling.<sup>20</sup> However, if used appropriately, in a narrow set of particular circumstances, reduced timetables may be helpful to enable the integration or reintegration of children into school life depending on their needs, for example, in certain medical situations.<sup>21</sup>

The inappropriate use of reduced timetables infringes on the child's right to education by inhibiting access. It is of particular concern that children who are already marginalised or vulnerable are at greater risk of discrimination. Under the UNCRC, schools have a duty to be inclusive, enabling all children to fully participate in society.<sup>22</sup> The UNCPD requires States to ensure that children with additional needs receive individualised support and accommodation to

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15 Communication received by the Children's Rights Alliance from the Department of Education, 19 January 2021.

16 Oireachtas Library and Research Services, Education in Ireland Statistical snapshot <<https://bit.ly/2LZzIWh>> accessed 26 January 2021.

17 Communication received by the Children's Rights Alliance from the Department of Education, 19 January 2021.

18 Deborah Brennan and Harry Browne, *Education, Behaviour and Exclusion The experience and impact of short school days' on children with disabilities and their families in the Republic of Ireland*, (Inclusion Ireland and Technological University Dublin 2019); AslAm, *Invisible Children: A Survey on School Absence and Withdrawal in Ireland's Autism Community*, (AslAm 2019); The Irish National Teachers Organisation (INTO), *The use of reduced timetable/reduced day in schools: INTO comment on draft guidelines*, (INTO 2019).

19 Harvard Centre on the Developing Child, 'Stress and Resilience: How Toxic Stress Affects Us, and What We Can Do About It' <<https://bit.ly/2N6NyBn>> accessed 7 October 2020.

20 T Ford et al, The relationship between exclusion from school and mental health: A secondary analysis of the British Child and Adolescent Mental Health Surveys 2004 and 2007, 2018 *Psychological Medicine*, 48(4), 629-641.

21 Joint Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables* (Houses of the Oireachtas 2019) 10.

22 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12. Committee on the Rights of Persons with Disabilities, 'General Comment No. 4, Article 24: Right to inclusive education' (2016) UN Doc CRPD/C/GC/4.

enable full participation - the opposite to informal exclusions. For children facing adversity either in their homes or communities, it is particularly vital that school is an accessible and enabling environment where consistent, safe, stable and nurturing relationships can be cultivated. Schools should be child-friendly spaces that foster a humane atmosphere and allow children to develop according to their evolving capacities, without discrimination.<sup>23</sup>

## ► Guidelines on Appropriate Use of Reduced Timetables

### What's been achieved for children so far?

The Government's commitment towards ensuring that reduced timetables are used only in a manner that is 'limited, appropriate and absolutely necessary' is being progressed through the development of guidelines outlining the circumstances where their use is acceptable. An inquiry by the Joint Committee on Education and Skills highlighted concerns surrounding the lack of oversight of reduced timetables; their disproportionate impact on specific cohorts of children; and their potential conflict with the constitutional right to education.<sup>24</sup> Following this, in September 2019, the Department of Education and Skills developed draft guidelines providing for greater monitoring and oversight.

The draft guidelines highlighted that reduced timetables should not be used as a behaviour management technique; should be applied proportionately; and last only as long as is necessary to facilitate a return to school on a full-time basis.<sup>25</sup> Schools would be obliged to notify the Child and Family Agency, Tusla Education and Welfare Service (EWS) when a child was placed on a reduced timetable, and to work with the National Council for Special Education (NCSE)

23 UNCRG General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12 and 10.

24 Joint Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables* (Houses of the Oireachtas 2019).

25 Department of Education and Skills, 'Minister for Education and Skills invites education partners to give views on proposed guidelines on reduced timetables' Press Release, 23 October 2019 <<https://bit.ly/3a7LvEz>> accessed 5 October 2020.

to ensure that where they are necessary, such measures will be used for only time-limited periods.<sup>26</sup>

The Department of Education and Skills worked in collaboration with Tusla's EWS (which was then under the remit of the Department of Children and Youth Affairs) on this draft and then sought the views of Education Stakeholders, while also drawing on the submissions made by various bodies to the Oireachtas Joint Committee on Education inquiry.<sup>27</sup> The then Department of Children and Youth Affairs consulted with the National Advisory Council for Children and Young People, and the Children's Rights Alliance prepared feedback on behalf of the Council with input from members as well.<sup>28</sup> However, there was no public consultation with wider civil society groups to support the guidelines' development and scope.

Although the revised guidelines have not yet been published, the Department has confirmed that they have been finalised and it is liaising with schools on the appropriate timing of the introduction of the guidelines given the context of the Covid-19 pandemic.<sup>29</sup> It is anticipated that these will be published by February 2021, but no accompanying training on the appropriate use of reduced timetables will be provided.<sup>30</sup>

## What children need next

To ensure reduced timetables are used appropriately and in a way which does not infringe on the constitutional rights of the child to education, it is vital that these finalised guidelines provide sufficient clarity as to what

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26 Department of Education and Skills, 'Minister for Education and Skills invites education partners to give views on proposed guidelines on reduced timetables' Press Release, 23 October 2019 <<https://bit.ly/3a7LvEz>> accessed 5 October 2020.

27 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 19 January 2021.

28 Feedback was contained in an unpublished letter: Better Outcomes Brighter Futures National Advisory Council, Letter to Minister for Education and Skills Joe McHugh TD and Minister for Children and Youth Affairs, Dr Katherine Zappone TD: re draft guidelines on the use of reduced timetables/reduced days in school, (Better Outcomes Brighter Futures National Advisory Council, unpublished October 2019).

29 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 2 December 2020.

30 Mr. Eddie Ward, Joint Committee on Education, Further and Higher Education, Research, Innovation and Science debate – Reduced School Timetables, 15 October 2020 <<https://bit.ly/3iPoj1P>> accessed 27 January 2021.



constitutes legitimate and proportionate circumstances for use of a reduced timetable. A failure to carefully delineate this may lead to inconsistency in application and inhibit the ability of Tusla’s EWS to provide appropriate and timely supplemental support if required. The guidelines should also set out the preliminary steps which should be taken prior to introducing a reduced timetable. Use of reduced timetables should be a last resort, always used proportionately for a time-limited period, and must never be a behaviour management mechanism for children with complex needs. Schools must be inclusive spaces and children with additional special educational needs should receive the support necessary to enable full participation. All children have the right to be free from discrimination<sup>31</sup> but inappropriate use of a reduced timetable potentially breaches this right, and the evidence presented in 2019 to the Joint Oireachtas Committee on Education and Skills suggests this practice is being used on the children who are most in need of consistent and tailored support in the school setting.<sup>32</sup> By outlining a clear pathway for how

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31 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 2.

32 Joint Committee on Education and Skills, *Interim Report on the Committee’s Examination on the Current Use of Reduced Timetables* (Houses of the Oireachtas 2019).



children's needs could be met in the school setting through early intervention and support, the risk of their inappropriate use is mitigated.<sup>33</sup>

The Department of Education has confirmed that it is using the guidelines to direct schools to the guidance note issued on prevention and early intervention.<sup>34</sup> However, given the evidence that reduced timetables are being used inappropriately,<sup>35</sup> it is unclear how helpful this has been to schools, or how equipped they are to follow it. Finally, the guidelines must also stress the importance of parental and child involvement and provide clear guidance on the mechanisms for redress in instances where there is a perceived violation of the child's education rights. The guidelines should provide for a right to appeal under Section 29 of the Education Act 1998.

## ► Robust Data Collection

### What's been achieved for children so far?

At present, there is no public information available on the status of the finalised guidelines and what form they will take when enacted, i.e., if a statutory framework will be introduced to ensure application or if this will be introduced through a departmental circular. Furthermore, while the Department of Education has confirmed that data will be gathered to inform future policy,<sup>36</sup> it remains unclear what precise data schools will be required to collect and report against, and whether this will be analysed and disaggregated centrally to ensure early identification and a needs-based response to the potential groups of children who are at greater risk of being placed on reduced hours inappropriately.

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33 Better Outcomes Brighter Futures National Advisory Council, Letter to Minister for Education and Skills Joe McHugh TD and Minister for Children and Youth Affairs, Dr Katherine Zappone TD: re draft guidelines on the use of reduced timetables/reduced days in school, (Better Outcomes Brighter Futures National Advisory Council, unpublished October 2019).

34 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 19 January 2021.

35 Joint Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables* (Houses of the Oireachtas 2019).

36 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 2 December 2020.

## What children need next

To enable the Department to identify children at greater risk of being placed on a reduced timetable and to better understand how and why reduced timetables are being used at local level, schools should be mandated to record specific information and feed this back centrally. This could include details such as the rationale for use of reduced timetable; the proposed length of time they will be used for; special educational needs or disability; ethnicity, including Traveller or Roma heritage; known to social services, for example if on child protection plan; and what plan is in place for return to school and supports that will be provided.

Independent oversight will be crucial for ensuring that reporting requirements are adhered to and that records are accurate. While current special needs inspections at primary and secondary level do include a focus on use of reduced timetables,<sup>37</sup> the available evidence suggests a concerning prevalence of reduced timetable use,<sup>38</sup> greater consideration should be given to how this can be monitored across all types of schools and what deterrents can be used to ensure use is limited to the select circumstances where this is absolutely necessary. Lessons could be drawn from England where 'off-rolling' – 'the practice of removing a pupil from the school roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the school roll, when the removal is primarily in the interests of the school rather than in the best interests of the pupil'<sup>39</sup> – is now externally scrutinised under the revised Ofsted Inspection Framework 2019, with significant consequences for school leadership if this practice is uncovered.<sup>40</sup>

Finally, the recognition of the need to address inappropriate use of reduced timetables through greater monitoring also provides welcome opportunity to consider teacher training and resourcing support for inclusive special educational needs education and trauma-informed practice. Teachers should

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37 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 19 January 2021.

38 Joint Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables* (Houses of the Oireachtas 2019).

39 Robert Long, Shadi Danechi *Off-rolling in English schools, 2020* (House of Commons Library 2020) <<https://bit.ly/3t1LlIe>> accessed 19 January 2021, 3.

40 *ibid.*

be provided with access to the requisite resources to enable them to properly support pupils in school to mitigate against an increased risk of reduced timetable usage. While 'Inclusive Education' – defined as relating to additional learning needs (e.g. autism, dyslexia, dyspraxia) and learning needs associated with diverse linguistic, socioeconomic, cultural and ethnic (including Traveller community and Roma) backgrounds - must form a mandatory and equitable part of initial teacher training in Ireland, current guidance to third-level programme providers does not specify how this should be addressed and what information should at minimum be included.<sup>41</sup> In line with advances in child development science, and our greater awareness of the prevalence of toxic stress and its impact on child behaviour and emotional regulation, it is vital that there is sufficient staff training to ensure that a safe, supportive environment, premised on stable, caring relationships can be created.<sup>42</sup> In relation to special educational needs, the new national training model for Special Needs Assistants which is being provided online from January 2021 represents an important step towards ensuring consistent care for all pupils with special educational needs.<sup>43</sup>

Monitoring is crucial for accountability and a mechanism for redress in instances of inappropriate use is essential, but it must be one strand of a broader policy around building schools' capacity to foster enabling and child-centred cultures that are inclusive of all children with a diverse range of needs.

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41 The Teaching Council, Céim: Standards for Initial Teacher Education (The Teaching Council 2020).

42 Harvard Centre on the Developing Child, 'Stress and Resilience: How Toxic Stress Affects Us, and What We Can Do About It' <<https://bit.ly/3qX3Pa9>> accessed 3 December 2020.

43 Department of Education and Skills – 'Minister Madigan launches new National Training Programme for Special Needs Assistants', Press Release, 28 September 2020, <<https://bit.ly/2LZQKOB>> accessed 26 January 2021.

## ➔ Recommendations

- ▶ Introduce a statutory framework which gives families the right to appeal reduced timetables in cases where their application is believed to be contrary to the best interests of the child.
- ▶ Develop a robust system of monitoring which ensures all schools are notifying Tusla's Educational Welfare Services when a reduced timetable is being used, for what reason and for what defined time-period.
- ▶ Publish annual analytical reports which provide publicly accessible information on the use of reduced timetables, that disaggregate by both environmental data (i.e. school type and geographical location) and anonymised child data (special educational needs or disability; diagnosed health condition; known to social services for example if on child protection plan; attendance record prior to reduced timetable; gender; ethnicity, including Traveller or Roma children).
- ▶ Provide adequate and comprehensive national training for all teachers on child development science and the impact that trauma can have on the developing brain, behavioural patterns and emotional regulation, as well as training on culturally inclusive and anti-racist whole-school approaches.
- ▶ Review and expand the 'inclusive education' component of initial teacher training to ensure all teachers have the requisite level of knowledge and skills to support children with special educational needs and disabilities, and develop a designated training pathway for teachers who want to specialise in this field.

# Reduced Timetables

## Case Study



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A reduced timetable is when the length of time a child spends in school is shortened. Reducing the time a child spends in school can sometimes be in their best interests but only in strict and limited circumstances. There is no official guidance on its use so schools can use it at their discretion. Too often, shortening school hours for a child happens when a school finds it difficult to manage the child's behaviour.

Tommy\* is a seven-year-old boy who has several additional needs. Tommy requires a particular environment in school to support his additional needs and help deal with communication and behavioural difficulties.

In September 2020, during the Covid-19 pandemic, Tommy's parents received an email from his school notifying them that Tommy would be put on a reduced timetable the next day.

In Tommy's case, the reduced timetable was not introduced with the consent of Tommy's parents. It was also introduced at a time when he had already lost out on six months of educational in-class learning due to Covid-19 restrictions.

In communication with the school, Tommy's parents were told not to bring him to school unless they agreed to pick him up at a certain time, earlier than the rest of his classmates. Concerned about any further educational setbacks, Tommy's parents sought the help of AsIAM. The situation has since been resolved but only after the intervention of other agencies.

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*\* Tommy's story is indicative of a growing trend emerging on the use of reduced timetables. Names and some identifying details have been changed to protect the privacy of the individual and families involved at the heart of this story.*



**5**

# **Constitutional Right to Education for Children with Special Educational Needs**

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**Section Grade:**

**D**



## **The Programme for Government commits to:**

Ensure each child with a special educational need has an appropriate school place in line with their constitutional right.

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▶ Progress: **Some**

**'Constitutional Right to Education for Children with Special Educational Needs' has received a D grade because although Budget 2021 continued the upward investment in special educational needs support, there is still an insufficient number of appropriate school places for children with additional needs. Aligned to this, the vast majority of Assessments of Need are not completed within the statutory timeframes, and exacerbating matters further, staff have been redeployed from frontline assessments to work on Covid-19 measures leading to some of the State's most vulnerable children being left in limbo.**

## Ireland's duties and responsibilities in international law



Every child has a right to education and the UN Committee on the Rights of the Child is clear that the overall objective of this right is to maximize the child's ability and opportunity to participate fully in their society.<sup>1</sup>

The Committee is clear that discrimination 'offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.'<sup>2</sup>

Ireland was last examined on progress against the UN Convention on the Rights of the Child (UNCRC) in 2016. At that time, the Committee expressed several concerns relating to education rights, including the lack of a comprehensive strategy for the inclusion of children with disabilities in mainstream education.<sup>3</sup>

The Committee advocated a human rights-based approach to disability, and specifically recommended that Ireland:

- ▶ Train and employ a sufficient number of specialised teachers and professionals in order to provide special needs education support and early childhood education for children with disabilities; and
- ▶ Establish a clear and objective framework to ensure that children with disabilities are provided with reasonable accommodation for their education needs, including in the context of State examinations.

Ireland also committed to making greater efforts towards equality and inclusion when it ratified the Convention on the Rights of Persons with Disabilities (UNCRPD). Article 24 is clear that children with special educational needs have a right to individualised support and reasonable accommodations to enable their effective participation in the general

1 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12.

2 *ibid*, para 10.

3 UNCRC, Concluding Observations: Ireland (2016) UN Doc CRC/C/IRL/CO/3-4.



education system. In considering the features of inclusive education,<sup>4</sup> the UN Committee on the Rights of Persons with Disabilities has commented:

- ▶ Persons with disabilities and, when appropriate, their families, must be recognised as partners and not merely recipients of education
- ▶ Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion.
- ▶ The education of persons with disabilities too often focuses on a deficit approach, on their actual or perceived impairment and limiting opportunities to pre-defined and negative assumptions of their potential.

Ireland is due to be examined on its progress in implementing both the UNCRC and the UNCRPD in 2021 and 2022.

## ▶ **What's the context for this commitment?**

Based on the 2016 census, approximately seven per cent of children in Ireland have a disability and three per cent<sup>5</sup> of students are considered to have a 'special need'.<sup>6</sup> In 2019/2020, there were just under 40,000 children accessing special needs support in school.<sup>7</sup>

Under Article 42, the Irish Constitution requires the State to 'provide for free primary education'.<sup>8</sup> The Courts have interpreted this to mean that there is no obligation on the State to educate children directly but they can discharge

4 Committee on the Rights of Persons with Disabilities, 'General Comment No. 4, Article 24: Right to inclusive education' (2016) UN Doc CRPD/C/GC/4. Para 11, 32 and 16.

5 National Disability Authority, Transforming Lives Programme to Implement the Recommendations of the 'Value for Monday and Policy Review of Disability Services in Ireland' Report on Future Needs for Disability Services (NDA 2018) 20.

6 *ibid*, 38.

7 Communication received by the Children's Rights Alliance from the Department for Education, 15 December 2020.

8 Irish Constitution, Article 42.4.

their obligation by providing financial assistance including paying teachers, providing buildings and school transport, and setting minimum standards.<sup>9</sup> The Education Act 1998 provides for 'a level and quality of education appropriate to meeting the needs and abilities of that person'<sup>10</sup> and 'to promote equality of access to and participation in education and to promote the means whereby students may benefit from education'.<sup>11</sup>

A series of legal challenges brought by families against the State has delivered some clarity on the entitlement of children with special educational needs. Through these cases the Courts have explicitly recognised the constitutional right to education of children with severe disabilities and the State's responsibility to provide free primary school education accordingly, although the scope of this right is limited to those under the age of 18 - rather than the developmental stage of the child.<sup>12</sup> In keeping with this narrower understanding, in subsequent cases the Courts have maintained that variations in educational provision, such as class sizes, quality of lessons, or differing approaches to support for children with special needs, do not amount to a failure on the part of the State to provide an appropriate education under the Constitution<sup>13</sup> and that parents are not entitled to choose the exact type of care their child receives in the school setting.<sup>14</sup>

Crucially, a key piece of legislation, the Education for Persons with Special Educational Needs (EPSEN) Act 2004 remains only partially commenced.<sup>15</sup> Almost 20 years on, not all parts of this Act are in full effect.<sup>16</sup> The EPSEN Act provides that children with special needs should be educated in an inclusive mainstream environment, unless to do so would not be in the best interests of the child.<sup>17</sup> However, the provision to prepare a tailored, annually-reviewed,

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9 Crowley v Ireland [1980] IR 102, 126.

10 Education Act 1998 s6(b).

11 Education Act 1998 s6(c).

12 Sinnott v. Minister for Education [2001] IESC 63.

13 O'C v Minister for Education and Science [2007] IEHC 170.

14 O'Carolan v Minister for Education and Science [2005] IEHC 296.

15 David M. Doyle, Marie Muldoon & Clíodhna Murphy *Education in Ireland: accessible without discrimination for all?* 2020 International Journal of Human Rights, 11.

16 Neil Kenny, Selina McCoy and Georgiana Mihut, *Special education reforms in Ireland: changing systems, changing schools* (2020) International Journal of Inclusive Education <<https://bit.ly/39X7f5Q>> accessed 13 January 2021.

17 Education for Persons with Special Educational Needs Act 2004, s2.

individual Education Plan for a pupil following assessment of need is not yet operational,<sup>18</sup> nor has the Special Education Appeals Board - the independent mechanism for review and redress - been established.<sup>19</sup>

Education Plans are vital as they clearly delineate what support is required based on an individual child's level of need and would place a duty on the Minister for Education to make education resources available in line with this. The delay in establishing the Board means families who are concerned their child is not receiving their full entitlements under the EPSEN Act, have no mechanism through which the child's rights could be vindicated except to litigate via the Courts. In short, the failure to commence the EPSEN Act in full has a significant and ongoing impact on the ability of children with special educational needs to access their constitutional right to education in full. It is unacceptable that despite the significant need for the implementation of the EPSEN Act, these key sections have not yet been commenced. Furthermore, given the EPSEN Act pre-dates Ireland's ratification of the UNCRPD in 2018, consideration should be given to reviewing and updating it to ensure it is in line with international human rights standards. This process must be prioritised and all sections commenced as a matter of urgency.

Since ratification of the UNCRPD, there has been significant and ongoing debate about what inclusive education means in the Irish context. The UN Committee on the Rights of Persons with Disabilities has advised that having a mainstream educational system and a separate special education system is not compatible with its view of inclusion, but recognises that significant change takes time to implement.<sup>20</sup> Considering this, the National Council for Special Education (NCSE) has been undertaking an extensive policy consultation on the educational provision that should be in place for students with special educational needs, with a view to making recommendations around the continued use of special schools and classes.<sup>21</sup> While numbers of children attending mainstream schools in special classes has increased significantly at primary level, more children with additional needs continue to attend special

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18 *ibid*, s9-13.

19 *ibid*, s36 and s37.

20 National Council for Special Education, *Policy Advice on Special Schools and Classes An Inclusive Education for an Inclusive Society?* Progress Report (NCSE 2019).

21 *ibid*, Communication received by the Children's Rights Alliance from the Department of Education, 15 December 2020.

schools than are co-educated with their peers.<sup>22</sup>

## ► What's been achieved for children so far?

In the *Programme for Government: Our Shared Future*, the Government committed to 'ensure each child with a special educational need has an appropriate school place in line with their constitutional right'.<sup>23</sup>

To meet its obligation, as narrowly interpreted by the Courts, the Government has increased investment in special educational needs support over the last decade. The 2020 allocation for additional special educational needs provisions amounts to one fifth of the overall education budget, representing an increase of more than 50 per cent since 2011.<sup>24</sup> This trend has continued in Budget 2021 with an allocation of a further €2 billion and a commitment to further workforce development.<sup>25</sup> The new resource allocation model for special education, introduced in 2017, gives schools greater autonomy to determine how best to use their special education teacher allocation based on the needs of their student community identified through school profile data.<sup>26</sup> Allocations are reviewed at regular intervals to ensure schools are receiving the appropriate amount.<sup>27</sup> This



22 DES, Education Indicators for Ireland (DES 2020) <<https://bit.ly/36aDihM>> accessed 9 October 2020.

23 Government of Ireland, Programme for Government, *Our Shared Future* (2020) 96.

24 Communication received by the Children's Rights Alliance from the Department of Education, 6 December 2019.

25 Irish Government, Expenditure Allocations 2021 <<https://bit.ly/2NzQyWF>> accessed 13 January 2021, 45-46.

26 Neil Kenny, Selina McCoy and Georgiana Mihut, *Special education reforms in Ireland: changing systems, changing schools* (2020) International Journal of Inclusive Education <<https://bit.ly/39X7f5Q>> accessed 13 January 2021.

27 Communication received by the Children's Rights Alliance from the Department for Education, 12 January 2021.

marks a welcome shift away from a medicalised assessment-based system of resource allocation, however there is limited accountability measures for monitoring decision-making which has led to some criticism.<sup>28</sup> The current mechanism for monitoring how schools use their allocations is the School Inspections Process,<sup>29</sup> however, this happens on a cyclical basis with whole school inspections usually taking place every five years.<sup>30</sup>

The State has also committed to invest in research and practice innovation through the roll-out of a new School Inclusion Model pilot across 75 schools nationwide which will continue in 2020/21.<sup>31</sup> This model trials enhanced support in the form of standardised training and support for Special Needs Assistants (SNAs), increased access to National Educational Psychological Service (NEPS), and the establishment on a pilot basis of a NCSE Regional Support Team, which includes specialists in relevant disciplines. Similarly, the announcement of a dedicated online national training programme for SNAs beginning in 2021 is a positive step forward.<sup>32</sup>

The Minister of State for Special Education and Inclusion, Josepha Madigan TD, has indicated that one of her key priorities is 'reviewing and updating EPSEN'<sup>33</sup> but no specific timelines have yet been provided. Current government policy is to progress aspects of the framework on a non-statutory basis initially, through policy developments across a range of areas, in conjunction with NCSE policy advice.<sup>34</sup>

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28 Neil Kenny, Selina McCoy and Georgiana Mihut, *Special education reforms in Ireland: changing systems, changing schools* (2020) *International Journal of Inclusive Education* <<https://bit.ly/39X7f5Q>> accessed 13 January 2021.

29 Communication received by the Children's Rights Alliance from the Department of Education, 12 January 2021

30 Prof. Gerry McNamara, 'School inspections in Ireland' <<https://schoolinspections.eu/impact/ireland/>> accessed 12 January 2021.

31 Department of Education, 'Ministers Foley and Madigan confirm continuation of the pilot School Inclusion Model for the forthcoming school year' Press Release, 5 August 2020 <<https://bit.ly/2KOGY16>> accessed 12 January 2021.

32 Department of Education and Skills, 'Minister Madigan launches new National Training Programme for Special Needs Assistants' Press Release, 28 September 2020 <<https://bit.ly/3c884LV>> accessed 14 October 2020.

33 Communication received by the Children's Rights Alliance from the Department of Education, 15 December 2020.

34 *ibid.*

## ► What children need next

### School places

The Education Act 1998 provides the regulatory framework for primary and secondary education, and explicitly refers to the provision of appropriate educational supports for children with special educational needs, while the Equal Status Acts 2000-2018 require that primary and post-primary schools do not discriminate in student admissions, including on disability grounds.<sup>35</sup> More recently, the Education (Admissions to Schools) Act 2018 has provided the Minister for Education with the power to compel a school to open a special needs class where the NCSE identifies a need in a given area.<sup>36</sup>

The 2018 Act was used for the first time in the Dublin 15 area in 2019 to combat the inadequacy of local educational provision for children with special educational needs. This action led to the establishment of a special school and six local schools have agreed to open special classes, thereby meeting the need for additional places in the area.<sup>37</sup> The NCSE submitted a report in April 2020 to the former Minister for Education and Skills confirming the need for additional special education places in South Dublin.<sup>38</sup> As a result of this, statutory notices under the Act were issued in June 2020 to 39 schools identified by the NCSE, to establish if the schools have capacity to provide new places.<sup>39</sup> It is unclear what the result of this process has been.

While it is positive that the Act is being used, the process which can culminate in a Ministerial direction is multi-step and so pupils may be without a place for many months. In December 2020, nationwide, there were 156 pupils of school-going age with special educational needs that are currently being

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35 Conor O'Mahony in C L Glenn and J De Groof (Eds.) *Balancing freedom, autonomy and accountability in education: Volume 2* (2012 Wolf Legal Publishers) 245-259.

36 Department of Education and Skills, 'Minister Bruton Delivers Historic Reform of School Admissions', (9 May 2018) <<https://bit.ly/2YadvBB>> accessed 9 October 2020.

37 Communication received by the Children's Rights Alliance from the Department of Education, 15 December 2020.

38 National Council for Special Education, Report Pursuant to section 37A(2) of the Education Act 1998 (as inserted by section 8 of the Education (Admissions to Schools) Act 2018) in respect of South Dublin (NCSE 2020).

39 Communication received by the Children's Rights Alliance from the Department of Education, 15 December 2020.

educated at home.<sup>40</sup> While a small minority of parents may choose to educate their children at home, for other families, education at home may be the only option due to the lack of appropriate provision for their child in the school catchment area. Some of these parents may feel ill-equipped to support their child at home and would rather their child receive an appropriate school-place. Research with parents in receipt of the home tuition grant to support their pre-school children with autism has highlighted that no curriculum guidelines were used, the curriculum was not informed by Aistear (The Early Childhood Curriculum Framework for children up to the age of six), and teaching strategies in homes were based on personal experiences and advice from friends and other sources.<sup>41</sup>

## Obligations under international law

As already set out, the Irish Courts interpretation of the constitutional right to education is much more limited than the right to education as delineated by the UN Committee on the Rights of the Child. While variations in educational provision, such as class sizes, quality of lessons, or differing approaches to support for children with special needs, do not amount to a failure to provide an appropriate education under the Constitution,<sup>42</sup> under the UNCRC, the right to education is considered expansively, and both the Committee on the Rights of the Child and the Committee on Rights of Persons with Disabilities recognise the need for individualised support and reasonable accommodations.<sup>43</sup> Ireland is due to be examined under the UNCRPD and the UNCRC in 2021 and it is likely that both Committees will examine the progress on the right to education for children with special educational needs. To meet its obligations under international law, the Government must address several issues relating to Assessments of Need; In-School Supports; Teacher Training and Professional Development; and the impact of Covid-19 restrictions on the education of this cohort.

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40 *ibid.*

41 Patricia Daly; Emer Ring et al, *An Evaluation of Education Provision for Students with Autism Spectrum Disorder in Ireland*, National Council for Special Education (NCSE 2016) 181.

42 *Ó C v Minister for Education and Science* [2007] IEHC 170.

43 Committee on the Rights of Persons with Disabilities, 'General Comment No. 4, Article 24: Right to inclusive education' (2016) UN Doc CRPD/C/GC/4; UNCRC, 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4.

## Assessments of need

Under the Disability Act 2005, all persons with a disability are entitled to an Assessment of Need (AON) to determine the health or educational services required, with the EPSEN Act 2004 also providing for an assessment of special educational needs for children to enable specific provisions to be made in the education setting.<sup>44</sup> However, as the relevant sections of the EPSEN Act have not been brought into effect, children who require AONs are using the mechanisms under the Disability Act 2005 for this.<sup>45</sup> Crucially, the assessment under the Disability Act is of the need for services for that child or young person, not an assessment of the need itself.<sup>46</sup>

Demand for AONs has outpaced system capacity, with a fourfold increase in applications over the past 11 years, leading to a failure to complete assessments within the statutory timeframes.<sup>47</sup> Currently, the AON must be commenced within three months of the date of application, with an Assessment Officer given a total of six months to complete the AON and write up the Assessment Report.<sup>48</sup> The most recent available data shows the number of assessments completed within these statutory timeframes was 8.8 per cent.<sup>49</sup> The failure of the State to commence parts of the EPSEN Act has meant that numerous families have no recourse but to go through the Courts to try to ensure their child receives their AON and the appropriate follow-up support.<sup>50</sup> The Ombudsman for Children has expressed concern that staff skilled in assessment of need have been redeployed to aid the Covid-19 effort, meaning there has been an insufficient number of trained staff to assess children during the pandemic and this has exacerbated delays.<sup>51</sup>

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44 Ombudsman for Children's Office, *Unmet Needs: A report by the OCO on the challenges faced by children of Ireland who require an assessment of their need*, (2020).

45 *ibid.*

46 *ibid.*

47 *ibid.*

48 Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 SI No. 263/2007.

49 Ombudsman for Children's Office *Unmet Needs: A report by the OCO on the challenges faced by children of Ireland who require an assessment of their need*, (OCO 2020).

50 Mary Carolan, 'Disabled children affected by 'extraordinary' failure to bring 2004 law into force – judge', *The Irish Times*, 30 July 2020.

51 Colm Keena, 'Disabled children 'being left behind again' by Covid-19 measures' *The Irish Times*, 1 December 2020.



The assessment of need is the crucial first step for enabling the child to receive reasonable accommodations and additional in-school supports necessary for them to achieve their full potential, and so, State failure to deliver AONs in the statutory timeframes is an interference with the rights under Irish law and could also be seen as an interference with the right to education as per the UNCRC.

## In-school support

Challenges can continue to persist even when a child has gained access to school due to significant variations in the capacities of different education settings to meet needs. The partial enactment of the EPSEN Act 2004, and its need for review in light of Ireland's ratification of the UNCRPD, combined with insufficient teacher training and professional development on special needs support, and comparatively high pupil to teacher ratios, have resulted in children with disabilities and additional needs in school being disadvantaged.<sup>52</sup> Compounding this is the absence of an independent appeal mechanism for parents via the NCSE for instances where there is a perceived lack of in-school support for their child.<sup>53</sup> The removal of this avenue for redress has coincided with an increase in the number of contacts to the Children's Rights Alliance legal helpline regarding lack of access to appropriate in-school support for children with special educational needs.<sup>54</sup>

Furthermore, research suggests that 'withdrawal' remains the dominant approach to special needs education in Irish mainstream primary schools, rather than mainstream differentiation and inclusion.<sup>55</sup> While it is important to recognise that special educational needs occur on a spectrum, and it may be in the best interests of a child with particularly complex needs to receive tailored support through a special class, this should not be considered mutually exclusive to embedding inclusive practice at whole-school level also. Emerging evidence suggests that the practice of identifying children with special educational needs as a separate and distinct group at both primary and

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52 AslAm, *Inclusion in Our Special Classes and Special Schools: A submission to the National Council on Special Education* (AslAm 2020).

53 DES, *A New Model for Allocating Special Education Teachers to Mainstream Schools: A better and more equitable way* <<https://bit.ly/39ZBYzf>> accessed 13 January 2021.

54 Children's Rights Alliance, *Helpline and Legal Advice Clinics Annual Report 2019* (2020).

55 R. Rose and M. Shevlin, 'Support Provision for Students with Special Educational Needs in Irish Primary Schools', (2020) *Journal of Research in Special Educational Needs* 20 51–63.



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secondary levels has inhibited a reconsidering of school culture and ethos to ensure it reflects the whole of the student body.<sup>56</sup> By accepting children with special educational needs but separating them from peers and controlling levels of access to the overall school environment and curricula, schools are less likely to be working with these students to ensure that overall culture is reflective of their needs and values.

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56 David McKeon, 'Soft barriers' – *The impact of school ethos and culture on the inclusion of students with special educational needs in mainstream schools in Ireland* (2020) *Improving Schools* Vol 23(2).

## Covid-19 measures

Progress towards maximising the educational participation and engagement of children with special educational needs has however been impacted by Covid-19 restrictions. Although the NCSE produced resources for parents and teachers to support home learning,<sup>57</sup> the disruption to children's routines and increased isolation appears to have taken a particular toll on children with additional needs. While all children's experience of education has been dramatically altered by the pandemic, there is survey evidence to suggest that children with special educational needs have been disproportionately adversely impacted by the closure of schools.<sup>58</sup> Parents of children with special educational needs reported that their child's behaviour and social skills regressed during this period of social isolation, in some cases quite significantly.<sup>59</sup> In light of these additional needs, the NCSE has also produced resources to support the transition back to school.<sup>60</sup> To ensure that no child is discriminated against in accessing their right to education, in compliance with Article 2 of the UNCRC,<sup>61</sup> it is vital that particular assistance and support for children with special educational needs is provided to counter regressions experienced during the pandemic.

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57 National Council for Special Educational Needs, Online Resources, <https://ncse.ie/online-resources> website accessed 9 October 2020

58 Dr Carol Barron and Mary Jane Emmet, 'Impact of Coronavirus Restrictions on Children and Young People' <<https://bit.ly/3caTDqb>> accessed 9 October 2020.

59 *ibid.*

60 National Council for Special Educational Needs, Online Resources, <<https://ncse.ie/online-resources>> accessed 9 October 2020.

61 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 2.

## ➔ Recommendations

- ▶ Review the EPSEN Act 2004 to ensure it complies with international human rights standards, including the UN Convention on the Rights of Persons with Disabilities and pending review provide a timeline for the commencement of the remaining sections of the Act.
- ▶ Resist redeployment of staff specialised in Assessment of Need during the ongoing Covid-19 pandemic and ensure that teams are adequately resourced to enable system capacity to keep pace with demand.
- ▶ Increase departmental outreach with schools to highlight the need for children with disabilities to be accommodated in the school setting in line with their constitutional right and to better understand the needs that schools have in order to do this.
- ▶ Where the Education (Admissions to Schools) Act 2018 is required to source a school place for a child, provide clear and transparent timelines for each stage of the process, to mitigate the risk that protracted delays occur further jeopardising children's education.

**6**

# Traveller and Roma Education

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Section Grade:

**D+**



## The Programme for Government commits to:

Undertake an independent assessment of the pilot projects aimed at retaining Traveller and Roma children in education.

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▶ Progress: **Slow**

**'Traveller and Roma Education' receives a D+ grade. While it is positive that Traveller and Roma children and their families have been involved in an extensive research project to establish a baseline understanding of their experience of school, it is not yet published. Formal assessment of the pilot projects has not begun and there are no interim findings to share despite the pilot being past the half-way mark in most sites.**

## Ireland's duties and responsibilities in international law



Every child has a right to education and the UN Committee on the Rights of the Child is clear that the overall objective of this right is to maximise the child's ability and opportunity to participate fully in their society.<sup>1</sup>

The Committee is clear that discrimination 'offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities'.<sup>2</sup> Indigenous children, which includes Traveller children, are particularly at risk of experiencing serious discrimination in accessing their rights, including in education, contrary to Article 2 of the UN Convention on the Rights of the Child (UNCRC). Therefore, the Committee has explained that children from minority backgrounds require special measures to fully enjoy their rights.<sup>3</sup>

Education is a key enabler of economic, social and cultural rights, and can strengthen access to civil and political rights.<sup>4</sup> Full realisation of the right to education for indigenous children is considered essential for achieving individual empowerment and self-determination of indigenous peoples.<sup>5</sup>

Ireland committed to promote, respect and protect children's rights when it ratified the UNCRC in 1992 and was last assessed on progress in implementing the rights in the Convention in 2016. The Committee expressed several concerns about the experiences of Traveller and Roma children in Ireland, noting the stigmatisation and social exclusion they experience.<sup>6</sup> The Committee was particularly concerned about the structural discrimination minority children faced in access to education,

1 UNCRC General Comment No. 1 on Article 29(1) the Aims of Education (2001) CRC/GC/2001/1 para 12.

2 *ibid*, para 10.

3 UNCRC 'General Comment No. 11 Indigenous children and their rights under the Convention' (2009) UN Doc CRC/C/GC/11 para 5.

4 *ibid*, para 57.

5 *ibid*.

6 UNCRC 'Concluding Observations: On the combined third and fourth periodic report of Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 28(a).

health and an adequate standard of living<sup>7</sup> and recommended the State define specific budgetary lines for Traveller and Roma children which are protected at all times, including during times of economic crisis.<sup>8</sup>

## ► What's the context for this commitment?

Based on the 2016 census data, just under one per cent of the Irish population identify as Travellers, approximately 30,000 people.<sup>9</sup> In contrast to the general population, most Travellers in Ireland are young, with 60 per cent aged under 25,<sup>10</sup> and two thirds of these under 15 years of age.<sup>11</sup> Census 2021 will include Roma as a separate ethnic category, however, at present there is limited data available, with the best estimate suggesting there are approximately 4,200 Roma in Ireland.<sup>12</sup>

As recognised by the UN Committee on the Rights of the Child, Traveller and Roma children face significant structural discrimination in Ireland.<sup>13</sup> Persistent discrimination against the Traveller community contributes to poorer outcomes in health, education and employment and lower life expectancy.<sup>14</sup> Similarly, for the Roma community, persistent poverty and inadequate standards of living jeopardise their health and wellbeing, as well as access to education.<sup>15</sup>

7 *ibid*, para 69.

8 *ibid*, para 16(d).

9 CSO, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' <<https://bit.ly/3rpzhxR>> accessed on 4 January 2021.

10 *ibid*.

11 Department of Children and Youth Affairs, *Statistical Spotlight #4, Young Travellers in Ireland* (DCYA 2020) 2.

12 Pavee Point & Department of Justice and Equality, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 42.

13 UNCRC 'Concluding Observations: On the combined third and fourth periodic report of Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 69.

14 CSO, 'Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion' <<https://bit.ly/3rpzhxR>> accessed on 4 January 2021.; Department of Health, *All Ireland Traveller Health Study: Our Geels* (UCD 2010).

15 Pavee Point & Department of Justice and Equality, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 59-66.



The experience and attainment of Traveller and Roma children at school is of particular concern. While the overall attainment level of Irish Travellers increased between 2011 and 2016, with more Travellers completing secondary school than before, many still do not.<sup>16</sup> Traveller children and young people are four times more likely to attend schools in the Delivering Equality of Opportunity in Schools (DEIS) programme than non-DEIS schools, and the number of Travellers receiving support in non-DEIS schools has declined.<sup>17</sup> Census data shows that while nearly 90 per cent of people aged 15 to 19 in the general population were still in education in 2016, only one in two in the Traveller population were, representing a slight improvement on the 2011 figures.<sup>18</sup>

Comprehensive data on Roma children and young people is lacking, however, recent analysis highlights that the number of Roma children attending mainstream and special primary school classes has increased across the 2016 to 2018 period.<sup>19</sup> Given the absence of accurate population numbers, the proportion of Roma children attending primary or secondary school is not available.

Significant financial and cultural barriers can help explain lower rates of school completion amongst Traveller and Roma children. Traveller families are more likely to experience unemployment and have a greater number of children than settled families, and therefore the financial costs associated with school attendance may be particularly challenging to meet.<sup>20</sup> Similarly, poverty and inadequate standards of living, including overcrowded accommodation, have been identified as significant obstacles to Roma children's attendance and participation in education.<sup>21</sup>

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16 Department of Children and Youth Affairs, *Statistical Spotlight #4, Young Travellers in Ireland* (DCYA 2020) 32.

17 *ibid*, 28.

18 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 1 February 2021.

19 Department of Children and Youth Affairs, *Statistical Spotlight #4, Young Travellers in Ireland* (DCYA 2020) 44.

20 Kathleen Marie Lawrence, *Traveller outcomes in education: A Traveller perspective* (Maynooth University 2017) 8.

21 Pavee Point & Department of Justice and Equality, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 114.

Aligned to this, the marginalisation of Traveller and Roma culture within the Irish education system adversely affects young people's sense of belonging and place.<sup>22</sup> A review of the position of Traveller history and culture in the school curriculum undertaken by the National Council for Curriculum and Assessment concluded that 'the dissonance between the social, linguistic and cultural environments of the home and school can account for disaffection' which is then compounded by conscious and unconscious bias against Travellers in the school community.<sup>23</sup> Furthermore, the 2010 *All Ireland Traveller Health Study* highlighted that reluctance amongst the community to continue in mainstream education was because of the high level of discrimination they faced when seeking employment following education.<sup>24</sup> For Roma children, insufficient English language and literacy support can compound experiences of bullying and marginalisation at school.<sup>25</sup>

A key commitment under the *National Traveller and Roma Inclusion Strategy 2017-2021 (NTRIS)* was that access, participation and outcomes for Travellers and Roma in education should be improved to achieve outcomes that are equal to those for the majority population.<sup>26</sup> The NTRIS includes ten education actions to improve outcomes for children at primary and post primary level including, for example, actions on Traveller culture and history, bullying research and school admissions.<sup>27</sup> On foot of these, a number of actions were commenced that attempt to better understand and address the barriers that Traveller and Roma children face in education, including a new two-year inclusion strategy pilot project.<sup>28</sup> The pilot is estimated to cost €2.2 million and began in September 2019 with three sites – Galway, Wexford and Dublin, with

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22 Kathleen Marie Lawrence, *Traveller outcomes in education: A Traveller perspective* (Maynooth University 2017); Pavee Point & Department of Justice and Equality, *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018).

23 National Council for Curriculum and Assessment, *Traveller culture and history in the curriculum: a curriculum audit* (NCCA 2019) 61.

24 Department of Justice and Equality, *The National Traveller and Roma Inclusion Strategy 2017–2021* (Department of Justice and Equality 2017) 12.

25 Pavee Point & Department of Justice and Equality *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 115.

26 Department of Justice and Equality, *The National Traveller and Roma Inclusion Strategy 2017-2021* (Department of Justice and Equality 2017) 25-26.

27 Department of Justice and Equality, *The National Traveller and Roma Inclusion Strategy 2017-2021* (Department of Justice and Equality 2017).

28 Communication received by the Children's Rights Alliance from the Department of Education, 20 January 2021.

a fourth site in Cork joining in 2020.<sup>29</sup>

The specific areas the pilot covered are Tuam, Bunclody/Enniscorthy, Finglas/Ballymun/Coolock and Cork and it was originally delivered in partnership with Tusla, the Child and Family Agency's Education Support Services, the Department of Justice and Equality and the Department of Children and Youth Affairs.<sup>30</sup> However, with the change in department remits under the new Government, the pilot is now a partnership between the Department of Education, Tusla and the Department of Children, Equality, Disability, Integration and Youth.<sup>31</sup>

Each pilot area is being provided with one additional educational welfare officer, funded by the Department of Education via Tusla, one additional home school liaison co-ordinator, funded by the Department of Education, and two additional Traveller and Roma education workers, funded by the Department of Children, Equality, Disability, Integration and Youth.<sup>32</sup> As well as supporting educational participation and engagement, the aim of the pilot is to increase engagement with Traveller groups, and the Government has stated that the pilot will inform the development of policy and innovative solutions to issues identified as barriers to participation and engagement.<sup>33</sup> With all sites operational, the pilot is currently available in around 59 schools, to over 1,300 children.<sup>34</sup>

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29 Communication received by the Children's Rights Alliance from the Department of Education, 20 January 2021.

30 Joint Committee on Education and Skills and Joint Committee on Key Issues affecting the Traveller Community, 'Opening Statement: Enda Hughes, Principal Officer, Department of Education and Skills, 3 December 2019' <<https://bit.ly/3jxrFqF>> accessed 5 February 2021.

31 Communication received by the Children's Rights Alliance from the Department of Education, 20 January 2021.

32 *ibid.*

33 Joint Committee on Education and Skills and Joint Committee on Key Issues affecting the Traveller Community, 'Opening Statement: Enda Hughes, Principal Officer, Department of Education and Skills, 3 December 2019' <<https://bit.ly/3jxrFqF>> accessed 5 February 2021.

34 Communication received by the Children's Rights Alliance from the Department of Education, 20 January 2021.

## ► What's been achieved for children so far?

The commitment in the Programme for Government is to undertake an independent assessment of the pilot projects aimed at retaining Traveller and Roma children in education.

The Department of Children, Equality, Disability, Integration and Youth had responsibility for the development and implementation of the baseline research data into these pilots and contracted Dr Maria Quinlan to carry out this research.<sup>35</sup> Fieldwork to establish an understanding of the current baseline scenario began in September 2019 and a report based on the findings was completed in late 2020.<sup>36</sup> It is expected that the report, along with an accompanying summary report, will be published in early 2021.<sup>37</sup>

The study explores the lived experience of parents and students from the Traveller and Roma communities, and teachers, principals, education welfare officers, home school community liaisons (HSCL), and other members of the school communities across the four NTRIS pilot sites.<sup>38</sup> In total, it comprised 130 interviews in 15 sessions across four sites with children, parents and teachers, to provide a range of views on the subject of Traveller and Roma children's engagement with school.<sup>39</sup> The focus was on exploring their thoughts, feelings, and experiences with regard to school attendance, engagement, participation, and retention, and four separate case studies, one from each pilot site, will be collected to help illustrate this.<sup>40</sup>

The Department of Children, Equality, Disability, Integration and Youth has confirmed that the second phase of the research will involve an evaluation of the actual pilots under the responsibility of Department of Education.<sup>41</sup> However, no information is available on the research design or what indicators

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35 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 1 February 2021.

36 *ibid.*

37 *ibid.*

38 *ibid.*

39 *ibid.*

40 *ibid.*

41 *ibid.*

are being used to measure impact.<sup>42</sup> Although the pilot has been operational in most sites since 2019, interim findings have not been published.<sup>43</sup>

It is important to note that the Covid-19 pandemic has had a significant adverse impact on Traveller and Roma young people's education throughout 2020 and this has affected delivery and evaluation of the pilots. The pilots are likely to be extended for a further period to ensure the findings are robust given the interruption to regular schooling.<sup>44</sup> During the course of the Covid-19 restrictions, the pilot teams have been an additional support to children and families as well as schools and ensured that pupils had access to Information and Communications Technology (ICT) equipment.<sup>45</sup> In addition to the general supports put in place for all schools, NTRIS pilot teams have been working with parents and pupils involved to encourage engagement with distance learning and support them in accessing remote learning platforms.<sup>46</sup>

More broadly, the Government has acknowledged that Traveller and Roma children have been more severely impacted by school closures due to inequalities in access to broadband and technology which can make online learning particularly challenging.<sup>47</sup> While the Department of Education issued guidance to schools on supporting pupils at risk of educational disadvantage, including Traveller and Roma children, and those for whom English is not their first language,<sup>48</sup> without community-wide provision of material support in the form of digital devices and access to broadband, it is unclear how helpful this additional guidance will be.

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42 Communication received by the Children's Rights Alliance from the Department of Education, 20 January 2021.

43 *ibid.*

44 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 1 February 2021.

45 Communication received by the Children's Rights Alliance from the Department of Education, 2 February 2021.

46 *ibid.*

47 Department of An Taoiseach, 'Report of the Social Implications of COVID-19 in Ireland. Preliminary Assessment' (Government of Ireland May 2020), 26.

48 *ibid.*

## ▶ **What children need next**

While it is positive to see a holistic research approach used to establish a reliable baseline against which progress can be measured, the formal evaluation has not yet commenced and there are no interim findings to share. The pilot was a key outcome of the *National Traveller and Roma Inclusion Strategy 2017-2021* and could have a significant impact on children from marginalised communities, yet little is known as to what impact it is having.

### ➔ **Recommendations:**

- ▶ Publish the report outlining the baseline data on Traveller and Roma children and young people's experience of education.
- ▶ Provide information on the pilot evaluation design and to what extent Traveller and Roma children and young people, as service users, will be involved in the evaluation.

7

# Children in Adult Psychiatric Facilities

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Section Grade:

C



## The Programme for Government commits to:

Work to end the admission of children to adult psychiatric units by increasing in-patient beds, as well as examining the model of assigning these beds.

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▶ Progress: **Steady**

**'Children in adult psychiatric facilities' receives a C grade. This is due to the publication in Summer 2020 of Sharing the Vision, the new mental health policy framework for Ireland. This makes it clear that adult inpatient units are not appropriate for children, and recognises that where no alternative is available, the Child and Adolescent Mental Health Services (CAMHS) inpatient standard must apply to children receiving support in adult settings. Future progress against this commitment must address ongoing barriers for children in accessing early mental health support, poor investment in services, and workforce recruitment and retention issues, given the impact these factors have on demand for, and capacity within, child inpatient services.**



## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) affords every child the right to the highest attainable standard of physical and mental health.<sup>1</sup> This right covers the full spectrum of health and wellbeing and fulfilling the right requires 'a comprehensive multisectoral response ... through integrated systems ... that involve parents, peers, the wider family and schools and the provision of support and assistance through trained staff'.<sup>2</sup> The UN Committee on the Rights of the Child endorses a public health and psychosocial support approach to mental health rather than overmedicalisation and institutionalisation.<sup>3</sup>

In order to uphold the right to the best possible health provision for children, treatment facilities should be available to all and staffed by an appropriately trained workforce, with accountability and oversight to ensure that quality assurance standards are met.<sup>4</sup> For children with acute needs who require support in a psychiatric unit, the Committee is clear that adolescents should be separated from adults, where appropriate, and any decision on their care should be made in accordance with their best interests.<sup>5</sup>

Ireland committed to promote, protect and respect children's rights, including the right to health, when it ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of this, Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention.

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 24.

2 UN Committee on the Rights of the Child (CRC), *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20, para 58.

3 *ibid.*

4 UN Committee on the Rights of the Child (CRC), *General comment No. 15 (2013) the right of the child to the enjoyment of the highest attainable standard of health (art. 24)\* 1 February 2013* CRC/C/GC/15 para 27.

5 UNCRC 'General Comment No. 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child' (2003) UN Doc CRC/GC/2003/4 para 29.

Ireland was last examined by the Committee in 2016. At that time, the Committee expressed several concerns relating to mental healthcare, including the long waiting times for treatment; the lack of access to out-of-hours support; and children being admitted to adult psychiatric wards owing to inadequate availability of mental healthcare facilities for children.<sup>6</sup>

The Committee recommended that Ireland improve the capacity and quality of its mental healthcare services for children and adolescents, with priority given to strengthening the capacity of its:

- ▶ mental healthcare services for inpatient treatment;
- ▶ out-of-hours facilities; and
- ▶ facilities for treating eating disorders.<sup>7</sup>

## ▶ What's the context for this commitment?

Research conducted with a representative sample of children and young people in Ireland suggests that approximately one in three young people will have experienced some type of mental disorder by the age of 13, with this rate rising to more than one in two by the age of 24 years.<sup>8</sup> While mental health problems are not selective, certain groups of children are at greater risk of poor mental health, including children who have experienced abuse or neglect,<sup>9</sup> including domestic abuse,<sup>10</sup> children living in poverty,<sup>11</sup> children who

6 UNCRRC, 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 53.

7 *ibid*, para 54.

8 Cannon and Coughlan *et al*, *The Mental Health of Young People in Ireland: a report of the Psychiatric Epidemiology Research across the Lifespan (PERL) Group* (Royal College of Surgeons in Ireland, 2013) 7.

9 Norman and Byambaa *et al*, *The long-term health consequences of child physical abuse, emotional abuse, and neglect: a systematic review and meta-analysis*, PLoS Medicine, 2012; Schaefer and Moffitt *et al*, *Adolescent victimization and early-adult psychopathology: Approaching causal inference using a longitudinal twin study to rule out non-causal explanations*, (2018) Clinical Psychological Science.

10 Roberts and Campbell *et al*, *The role of parenting stress in young Children's mental health functioning after exposure to family violence* (2013) Journal of Traumatic Stress, 26(5).

11 Wickham, Whitehead, Taylor-Robinson, Barr, *The effect of a transition into poverty on child and maternal mental health: A longitudinal analysis of the UK millennium cohort study* (2017) The Lancet Public Health, 2 (3).

have experienced discrimination, including homophobia or transphobia,<sup>12</sup> and children with chronic physical health conditions.<sup>13</sup>

Experience of mental ill-health and poor emotional wellbeing can have a significant adverse impact on the child, affecting their experience and attainment at school, their friendships and family relationships, and their day-to-day life.<sup>14</sup> When problems are unidentified and unsupported, and appropriate and timely help is not provided, they can deteriorate. Longitudinal research tracking the number of presentations to Irish hospital emergency departments for self-harm since 2007 found a significant increase over time, with younger teenage girls at greatest risk.<sup>15</sup> While there has been some reduction since the start of the decade, 2019 data shows that almost 10 per 100,000 children and young people aged 15-24 years die by suicide.<sup>16</sup>

International evidence clearly shows that most adult mental health disorders emerge in childhood and that early intervention and support can be crucial for ensuring that problems do not persist across the life course.<sup>17</sup> Childhood and adolescence are periods of significant malleability in social and neurological development and with the right support at the right time, children can make a full recovery, enabling them to live their lives in full.

Despite a robust evidence base showing the value in safeguarding and promoting mental health in childhood, a number of significant issues exist for CAMHS which combine to diminish children and young people's right to the

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12 Tina Dürrbaum, Frank A. Sattler, *Minority stress and mental health in lesbian, gay male, and bisexual youths: A meta-analysis* (2020) *Journal of LGBT Youth* 17:3; Liu & Mustanski, *Suicidal Ideation and Self-Harm in Lesbian, Gay, Bisexual, and Transgender Youth* (2012) *American Journal of Preventative Medicine*, 42(3).

13 Vanessa E. Cobham, et al., *Systematic Review: Anxiety in Children and Adolescents With Chronic Medical Conditions*, (2020) *Journal of the American Academy of Child & Adolescent Psychiatry*, 59(5).

14 JM de Lijster, et al. *Social and academic functioning in adolescents with anxiety disorders: A systematic review*, (2018) *Journal of Affective Disorders*; Whear, Ukoumunne, Bethel, Thompson-Coon, Stein & Ford *School exclusion in children with psychiatric disorder or impairing psychopathology: a systematic review* (2014) *Emotional and Behavioural Difficulties*, 20.

15 Griffin, McMahon et al, *Increasing rates of self-harm among children, adolescents and young adults: a 10-year national registry study 2007–2016* (2018) *Social Psychiatry Psychiatric Epidemiology*, 53.

16 Communication received by the Children's Rights Alliance from the Health Service Executive, 22 December 2020.

17 Cannon, Coughlan, Clarke, Harley & Kelleher, *The Mental Health of Young People in Ireland: a report of the Psychiatric Epidemiology Research across the Lifespan (PERL) Group* (2013 Royal College of Surgeons in Ireland).

highest attainable standard of mental health. These include long waiting lists for treatment,<sup>18</sup> combined with poor investment<sup>19</sup> and workforce recruitment and retention issues.<sup>20</sup>

Crucial to this government commitment, specialist inpatient provision is also under-resourced. Ireland has the third lowest number of inpatient psychiatric care beds in the European Union (EU) (34.83 beds per 100,000 population).<sup>21</sup> At present, there are just four public child inpatient units in Galway, Cork and Dublin, and during 2019, there were a total of 50 admissions to adult psychiatric units (14 per cent of the total child admissions),<sup>22</sup> contrary to the recommendations of the UN Committee on the Rights of the Child following their 2016 examination.<sup>23</sup> The vast majority of these children were 16 or 17-year-olds and typically stayed less than one week,<sup>24</sup> with 48 per cent discharged within three days.<sup>25</sup> During the Covid-19 pandemic, units have remained open and patients have been provided with services, however, numbers have been reduced in some settings and family visits restricted in line with public health advice.<sup>26</sup>

Official Health Service Executive (HSE) policy is that children should only be placed in adult units when 'all alternative options have been exhausted'.<sup>27</sup> However, in practice, poor capacity in child inpatient units, the absence of 24/7 mental health services, and the nature of the immediate safeguarding risk, means that children, particularly those who present at the weekend to emergency departments with significant acute needs, may be admitted

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18 Maresa Fagan, 'Barnardos 'deeply concerned' over mental health waiting list for children and teens', Irish Examiner, 9 June 2020.

19 Irish Hospital Consultants Association, 'New mental health policy fails to address critical staffing deficits, says IHCA' Press Release 7 June 2020 <<https://bit.ly/3qPT2OV>> accessed 13 October 2020.

20 *ibid.*

21 *ibid.*

22 Communication received by the Children's Rights Alliance from the Health Service Executive, 22 December 2020.

23 UNCRC, 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 54.

24 Communication received by the Children's Rights Alliance from the Department of Health, 27 October 2020.

25 Communication received by the Children's Rights Alliance from the Health Service Executive, 22 December 2020.

26 Communication received by the Children's Rights Alliance from the Department of Health, 27 October 2020.

27 HSE, *HSE Performance Profile October-December 2019 Quarterly Report* <<https://bit.ly/39fn2hm>> accessed 8 January 2021, 34.

to adult units given the scarcity of alternative options. Of the six public and private child inpatient units, only two will take an out-of-hours referral, for example, over the weekend.<sup>28</sup>

The Mental Health Commission notes a child's 'first introduction to mental health care should not be through a service or building that is not specifically equipped to support their needs'.<sup>29</sup> Children who are placed in adult psychiatric wards are receiving care in a unit which isn't designed with their specific needs in mind. Furthermore, despite mental health recovery being enhanced by an ability to remain close to existing support networks, the State has historically sought the permission of the High Court to send Irish children with particularly complex needs to other jurisdictions for inpatient support due to the inadequacy of the specialist provision in Ireland.<sup>30</sup> While the High Court must keep the case under regular review, it is particularly concerning that children have been sent to facilities which have been found to be of poor quality. For example, several children have been sent from Ireland to a facility in England that the British independent regulatory body, the Care Quality Commission, has identified as failing in its duty of care to vulnerable children.<sup>31</sup>

## ► **What's been achieved for children so far?**

The Mental Health Commission's Code of Practice states that the placement of children in adult wards would be phased out by the end of 2011,<sup>32</sup> yet almost a decade later, significant issues persist, and some children continue to be cared for in age-inappropriate facilities.

While the previous mental health policy framework, *A Vision for Change*, had a target of providing 100 inpatient beds in child units based on the child population at the time, the updated version of this policy *Sharing the Vision*

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28 Mental Health Commission, *Annual Report 2019* <<https://bit.ly/3iKEcq5>> accessed 8 January 2021, 27.

29 *ibid*, 5.

30 Lisa Colfer and Dr Carol Coulter, 'High Court oversight of children's complex care needs', January 2020 <<https://bit.ly/3iHRi7w>> accessed 5 January 2021.

31 Conor Gallagher 'UK mental health facility accommodating Irish children faces closure', *The Irish Times*, 8 June 2019.

32 Mental Health Commission, *Code of Practice Relating to Admission of Children under the Mental Health Act 2001: Addendum* (MHC 2009).

published in 2020, does not contain any targets for expanding capacity in child inpatient units.<sup>33</sup> *Sharing the Vision* acknowledges that adult inpatient units are not appropriate environments for children and states that:

... in the event that there is no CAMHS inpatient bed available and short-term admission to an adult unit is the only option, then a range of actions are necessary. These actions need to be consistent with the CAMHS inpatient standard operating guidelines to provide appropriate, effective and safe care.<sup>34</sup>

Positively, over the last decade there has been a steady decrease in admissions of under 18s to adult units, with a 67 per cent reduction since 2010.<sup>35</sup> Furthermore, *Sharing the Vision* recognises that there should be an out-of-hours service for young people in significant distress across all geographical areas<sup>36</sup> and includes a core commitment to trauma-informed care delivery.<sup>37</sup> These are welcome developments and strengthen the case for ensuring children are supported in age-appropriate and accessible facilities in line with human rights standards<sup>38</sup> and principles of person-centred care.<sup>39</sup>

Aligned to this, in its 2020 National Service Plan, the HSE has allocated €13 million for new mental health service development, some of which will go towards increasing capacity in CAMHS, although it is unclear what portion of funding inpatient units will receive, if any.<sup>40</sup> The Department of Health has also confirmed that once opened in 2023, the National Children's Hospital, will have an additional 20 inpatient CAMHS beds and the National Forensic Mental Health Hospital, due to open in 2021, will have an additional 10 inpatient beds

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33 Department of Health, *A Vision for Change* (DOH 2006); Department of Health, *Sharing the Vision: A Mental Health Policy for Everyone* (DOH 2020).

34 *ibid* 47.

35 Antoinette Daly and Sarah Craig *HRB Statistics Series 41 Activities of Irish Psychiatric Units and Hospitals 2019 Main Findings* (HRB 2020) <<https://bit.ly/3ofDX7F>> accessed 8 January 2021, 19.

36 Department of Health, *Sharing the Vision: A Mental Health Policy for Everyone* (DOH 2020) 60.

37 *ibid*, 17.

38 UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) the right of the child to the enjoyment of the highest attainable standard of health (art. 24) 1 February 2013 CRC/C/GC/15.

39 The Health Foundation, *Person-centred care made simple: What everyone should know about person-centred care* (2016) <<https://bit.ly/2YdlSww>> accessed 8 January 2021.

40 Health Service Executive, *National Service Plan 2020* (HSE 2019) 74.

for children.<sup>41</sup> Following these additions, the total number of child inpatient beds will be 104.<sup>42</sup>

## ► **What children need next**

### **Ending admission to adult units**

The commitment to 'work to end the admission of children to adult psychiatric units by increasing in-patient beds as well as examining the model of assigning these beds' while welcome, is quite broad and should be accompanied by a transparent target around increased child inpatient bed capacity. There are several significant barriers to realising this commitment given current levels of demand for child inpatient services; these barriers relate to three main areas: investment; workforce development; and referral pathways affected by limited out-of-hours support – and these interdependencies must be acknowledged if progress is to be made.

To enable the development of enhanced inpatient psychiatric care for children, a clear target for increasing inpatient bed capacity must be set and a dedicated budget must be provided. The absence of any inpatient bed target in *Sharing the Vision* will make it difficult to monitor progress over the course of this government term. Similarly, it is vital that implementation against this target is supported by the necessary investment. Up until 2020, mental health amounted to about six per cent of the total health budget which is low by international standards and approximately just half of what most Northern European Countries spend on mental health support.<sup>43</sup> Therefore, while the Government's commitment to an additional €38 million for mental health services announced in Budget 2021 is to be welcomed,<sup>44</sup> given this is allocated in light of the Covid-19 pandemic, it is unclear how much, if any, will be given to expand CAMHS inpatient facilities.

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41 Communication received by the Children's Rights Alliance from the Health Service Executive, 3 November 2020.

42 *ibid.*

43 Irish Hospital Consultants Association, 'New mental health policy fails to address critical staffing deficits, says IHCA' Press Release 7 June 2020, <<https://bit.ly/3qPT2OV>> accessed 13 October 2020.

44 Irish Government, Part II - Expenditure Allocations 2021 <<https://bit.ly/39hKwT3>> accessed 8 January 2021, 80.





Looking beyond investment, a key strand of mental health policy must be to stabilise workforce levels in order to ensure that mental health services, including inpatient units in particular, can provide appropriate and safe care to service users. The HSE notes that the mental health workforce is still below recommended levels under *A Vision for Change*, with current capacity in community CAMHS representing just 57.5 per cent of the recommended clinical staffing levels.<sup>45</sup> Also of particular concern is the consistent decline in nursing capacity in child inpatient units which was almost 20 per cent lower in 2019 than it was in 2014.<sup>46</sup> Aligned to this, children supported in inpatient units require significant clinical care and advanced expertise, yet current consultant psychiatry numbers in Ireland are less than half the EU average<sup>47</sup> and recent research suggests that 75 per cent of CAMHS psychiatrists are experiencing burnout.<sup>48</sup>

Finally, greater attention must be given to the referral pathway for children in need of acute specialist support and the limitations of a nine to five service. In line with societal engagement with mental health and the normalisation of help-seeking, referrals to CAMHS have increased by over 40 percent from around 12,800 in 2011 to 18,100 in 2019.<sup>49</sup> The significant rise in demand, coupled with poor geographical coverage of appropriate specialist community care via CAMHS, has led to long waiting times, with many children with complex needs unable to access timely support. While almost 90 per cent of urgent referrals to CAMHS for high-risk presentations were seen within three days in 2020, less than half of CAMHS routine referrals were seen within three months,<sup>50</sup> meaning that many children with significant mental health needs are left in limbo, with problems liable to deteriorate over time.

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45 HSE Mental Health Service, *Delivering Specialist Mental Health Services* (2019) <<https://bit.ly/2NvjwH3>> accessed 8 January 2021, 45-6.

46 HSE Mental Health Service, *Delivering Specialist Mental Health Services* (2019) <<https://bit.ly/2NvjwH3>> accessed 8 January 2021, 45-6.

47 McNicholas F, Sharma S, O'Connor C, et al. *Burnout in consultants in child and adolescent mental health services (CAMHS) in Ireland: a cross-sectional study* (2020) *BMJ Open* 7.

48 McNicholas F, Sharma S, O'Connor C, et al. *Burnout in consultants in child and adolescent mental health services (CAMHS) in Ireland: a cross-sectional study* (2020) *BMJ Open* 4.

49 Mental Health Reform, *Campaign Agenda 2020*, January 2020 <<https://bit.ly/2Mquxc3>> accessed 8 January 2021.

50 Communication received by the Children's Rights Alliance from the HSE, 22 December 2020.

<b>CAMHS wait times</b>								
	<b>Total Waiting No.</b>	<b>Less than 3 months No.</b>	<b>&gt;3&lt;6 months No.</b>	<b>&gt;6&lt;9 months No.</b>	<b>&gt;9&lt;12 months No.</b>	<b>&gt;12&lt;15 months No.</b>	<b>&gt;15&lt;18 months No.</b>	<b>More than 18 months No.</b>
Total No. to be seen or waiting to be seen by CAMHS Oct 2020	2,229	1,086	322	316	258	143	64	40
Total No. to be seen or waiting to be seen by CAMHS Oct 2019	2,099	966	460	322	149	64	35	103
Total No. to be seen or waiting to be seen by CAMHS Oct 2018	2,368	977	514	392	188	105	87	105
Total No. to be seen or waiting to be seen by CAMHS Oct 2017	2,319	933	464	356	237	122	96	111

Source: Data provided by HSE Mental Health Services to Children's Rights Alliance, 22 December 2020

Although in 2019, the HSE committed to developing a seven-day CAMHS service nationwide,<sup>51</sup> most CAMHS still only operate from Monday to Friday in standard working hours, meaning that children who require significant assistance outside of this timeframe have no option but to continue to seek help through hospital emergency departments.<sup>52</sup> It is clear from a child rights perspective that children needing inpatient assistance should be separated from adults and all support provided in line with their best interests.<sup>53</sup> However, if a child presents to the emergency department on a weekend, it may not be

51 Health Service Executive, National Service Plan 2019 (HSE 2019) < <https://www.hse.ie/eng/services/publications/serviceplans/national-service-plan-2019.pdf>> accessed 25 January 2021, 41

52 Mental Health Reform, *Briefing note on delivery of 24/7 community based mental health services* <<https://www.mentalhealthreform.ie/wp-content/uploads/2017/11/Briefing-note-for-Minister-Daly-on-24-7-crisis-mental-health-supports-final-2.pdf>> accessed 8 January 2021.

53 UNCRC 'General Comment No. 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child' (2003) UN Doc CRC/GC/2003/4 para 29.

possible for a full therapeutic assessment to be conducted by an appropriate specialist - and due to the immediate safeguarding concerns, it may be in the child's best interests to be clinically monitored until full assessment can take place. In the absence of an available bed in a child psychiatric unit, the child may have to be admitted to the general psychiatric ward designed for adults or to a general hospital ward,<sup>54</sup> rather than being supported in age-appropriate facilities as the guidance on implementation of the right to health recommends.

Given there is a limited number of child inpatient beds, it is critical that specialist outpatient services providing community care to children are resourced to meet existing levels of demand and expanded to enable delivery of out-of-hours support. A failure to invest upstream and develop a coordinated multi-agency response to initial presentations of need risks conditions worsening over time and increased demand on inpatient support units in the long run, including adult units. This may be particularly true for children with additional conditions, such as intellectual disabilities or autism whose needs can be more challenging to meet in the existing inpatient child units.<sup>55</sup>

It is worth noting that the impact of the Covid 19 pandemic may compound these problems and increase demand for mental and emotional wellbeing support. The Economic and Social Research Institute has highlighted that existing provision is unlikely to be adequate to support an increase in child service-users, particularly given the existing backlog in access and treatment.<sup>56</sup> By the end of October 2020, just over 13,000 children had been referred to CAMHS, some 70 per cent of these were accepted for treatment and 63 per cent were seen.<sup>57</sup>

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54 Mental Health Commission, *Annual Report 2019* <[https://www.mhcirl.ie/File/MHCAnnualReport\\_2019.pdf](https://www.mhcirl.ie/File/MHCAnnualReport_2019.pdf)> accessed 8 January 2021, 27-28

55 Department of Health, *Sharing the Vision: A Mental Health Policy for Everyone* (DOH 2020).

56 Merike Darmody, Emer Smyth and Helen Russell, *Implications of the COVID-19 pandemic for policy in relation to children and young people* (ESRI 2020).

57 Communication received by the Children's Rights Alliance from the HSE, 22 December 2020.

## Examining the model of allocation

In pledging its commitment to ending the admission of children to adult psychiatric wards, the Government indicated it would review the model of allocation of these beds. However, assignment of children to inpatient services is primarily a clinical matter.<sup>58</sup> If a bed is not available in the nearest child inpatient unit, and based on level of urgency, the referring team can refer the child to other inpatient units as part of a coordinated national network. To ensure alignment, the HSE's National Mental Health Division has recently commenced consultation with CAMHS inpatient services to examine the structures and activity levels of the four child inpatient units. The work is in its early stages, but this consultation will review governance, bed capacity and usage, admissions, discharges, and responsiveness to demand and referrals.<sup>59</sup>

This HSE comparative audit of child inpatient services will be helpful for better understanding psychiatric need and configuration of specialist inpatient services, and it is important this work progresses over 2021. However, to ensure that no more children are placed on adult wards in Ireland or sent abroad to facilities outside the State which may be providing sub-standard care, the Government's attention must focus on addressing systemic health policy issues such as resourcing, the referral pathway and recruitment and retention of specialist staff. Addressing these factors will help to mitigate the risk that children reach crisis point and are unable to be cared for in age-appropriate facilities designed to meet their needs in Ireland.

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58 Communication received by Children's Rights Alliance from HSE, 3 November 2020.

59 Communication received by Children's Rights Alliance from HSE, 3 November 2020.

## ➔ Recommendations

- ▶ Set a transparent target for increasing child inpatient unit capacity over the course of this Government based on projected levels of demand for acute psychiatric support.
- ▶ Undertake a recruitment drive, particularly of mental health nurses, to ensure all existing child inpatient units can operate at maximum capacity and provide enhanced clinical supervision and care for staff working in CAMHS to mitigate the risk of burn-out and staff shortages.
- ▶ Ensure that all adult units which are currently providing inpatient support to children adhere to the CAMHS Inpatient Code of Governance through regular service inspections.
- ▶ Conduct an audit of children's referral pathways into specialist inpatient care to better understand the profile of children in need of acute assistance, including groups of children who may be at particular risk, and examine whether there were opportunities for earlier intervention which could have averted need for inpatient support.
- ▶ Publish HSE audit on the structures and activity levels of the four child inpatient units and examine if inpatient unit configuration could be refined to ensure all children can be supported in age-appropriate facilities.
- ▶ Increase funding for mental health as a portion of the overall health budget, with a particular focus on expanding capacity in primary care psychology and CAMHS to ensure that children receive timely help and conditions do not deteriorate necessitating inpatient admission.

**8**

# **Food Poverty**

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**Section Grade:**

**D**



## The Programme for Government commits to:

Work across government to address food poverty in children and ensure no child goes hungry.

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▶ Progress: **None**

Continue to review and expand the rollout of the new Hot School Meals initiative.

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▶ Progress: **Steady**

'Food poverty' receives a D grade. This is due to the lack of progress made in 2020 to work across Government to address food poverty in children. The continued provision of funding to expand the Hot School Meals Initiative in Budget 2021 is positive, however the review of the pilot initiative has not been completed and there is no comprehensive plan as to how the initiative will be scaled-up in the coming years.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) provides that every child has the right to enjoyment of the highest attainable standard of physical health and governments have an obligation to combat disease and malnutrition through the provision of adequate nutritious food.<sup>1</sup> The Committee on the Rights of the Child has recommended that in implementing this right providing food in school is 'desirable to ensure all pupils have access to a full meal every day' and recommends that this is combined with education on nutrition and health.<sup>2</sup> The Committee further recommends that this should include the training of teachers in child nutrition and healthy eating habits.<sup>3</sup>

Children also have the right to an adequate standard of living for their physical, mental, spiritual, moral and social development<sup>4</sup> and States are required to 'take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing'.<sup>5</sup>

The UN International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to an adequate standard of living, including access to adequate and affordable food.<sup>6</sup> Under the UN Sustainable Development Goals (SDGs) the State has committed to 'end

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 24.

2 UNCRC General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) CRC/C/GC/15, para 46.

3 *ibid.*

4 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27.

5 *ibid.*

6 International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3 (ICESCR) Art 11.



hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round by 2030'.<sup>7</sup>

## ► What's the context for this commitment?

Food poverty is defined as the inability to have an adequate or nutritious diet due to issues of affordability or accessibility.<sup>8</sup> Food poverty is multidimensional, encompassing a lack of access to a nutritionally adequate diet with an impact on health and social participation.<sup>9</sup> In Ireland, eight per cent of households were at risk of food poverty in 2018, down from 13.3 per cent in 2013.<sup>10</sup>

Households with children are more at risk of food poverty and this risk increases by family size.<sup>11</sup> In 2018, 19 per cent of 10 to 17 year old children went to school or bed hungry compared to 22 per cent in 2014.<sup>12</sup>



The *EU Recommendation on Investing in Children* recommends that States 'invest in prevention, particularly during early childhood years, by putting in place comprehensive policies that combine nutrition, health, education and social measures'.<sup>13</sup> The average weekly cost of a minimum healthy food basket fell by 4.4 per cent between 2016 and 2018. However, food costs rise as

7 United Nations Department of Economic and Social Affairs Disability '#Envision2030 Goal 2: Zero Hunger' <<https://bit.ly/3bhOH2n>> accessed 8 January 2021.

8 Safe Food, *What is the cost of a healthy food basket in 2018?* (2019) <<https://bit.ly/2Rr156A>> accessed 8 January 2021.

9 *ibid.*

10 Central Statistics Office, *Ireland's UN SDGs 2019 Report on Indicators for Goal 2 Zero Hunger* (2020) <<https://bit.ly/3bWkSl2>> accessed 8 January 2021.

11 Carney and Maitre, *Social Inclusion Technical Paper No. 3*, Dublin and Department of Employment Affairs and Social Protection (DEASP 2012).

12 Költő and Gavin et al *The Irish Health Behaviour in School-aged Children (HBSC) Study 2018*. (Department of Health & Galway: Health Promotion Research Centre NUIG 2020).

13 European Commission, *Commission Recommendation of 20.2.2013: Investing in children: breaking the cycle of disadvantage* (Brussels, 20.2.2013 C(2013) 778 final).

children grow older. A household with a teenager, reliant on social welfare, is required to spend 30 per cent of their income to meet the cost of a healthy food basket.<sup>14</sup> Rural households are particularly at risk of food poverty; in 2018, the weekly cost of a healthy food basket for a two-parent family with two children living in a rural area was €153. This compared to €139 for the same size of family living in an urban area.<sup>15</sup>

Food poverty is one of the driving forces behind higher rates of obesity and ill-health in disadvantaged communities.<sup>16</sup> Research on the links between dietary energy density and dietary energy cost has found that refined foods, added sugars and added fats are some of the cheapest sources of dietary energy as opposed to more costly nutrient dense foods such as lean meat, fruit and vegetables.<sup>17</sup> The high cost of good quality, nutritious food often prices low-income families out of maintaining healthy diets by limiting their choices to more processed and refined food-based diets as a cost-effective way of meeting daily calorific requirements.<sup>18</sup> In Ireland, by age three, children from lower socio-economic backgrounds are more likely to have consumed energy-dense food like hamburgers and crisps, but less likely to have eaten fresh fruit or vegetables.<sup>19</sup> Poor nutrition in children is linked to reduced development, cognitive function, delayed school enrolment, impaired concentration, increased illness,



**Weekly cost of a healthy food basket for a two parent family with two children**

**€153**

RURAL

**€139**

URBAN

14 Safe Food, *What is the cost of a healthy food basket in 2018?* (2019) <<https://bit.ly/2Rr156A>> accessed 8 January 2021.

15 Safe Food, *What is the cost of a healthy food basket in the Republic of Ireland in 2018?* (2019) <<https://bit.ly/39rVaWf>> accessed 8 January 2021.

16 Irish Heart Foundation, *Investing in children's future health Pre-Budget Submission* (IHF 2015) 3.

17 David Madden, 'The Poverty Effects of a 'Fat-Tax' in Ireland' (2015) 24 *Health Economics*, 4.

18 *ibid.*

19 James Williams, Aisling Murray, Cathal McCrory, Sinéad McNally, *Growing Up in Ireland - Development From Birth To Three Years* (Department of Children and Youth Affairs 2013) 37.

absenteeism and early school leaving.<sup>20</sup> Being able to buy nutritious food locally or having access to transport to a local supermarket helps to prevent food poverty, and more economically advantaged households do not have to travel as far for food shopping.<sup>21</sup> Evidence also shows that families living on low and fixed incomes tended to cut back on food expenditure as it was easier to control than the cost of rent, utilities, or education.<sup>22</sup> Parents - and mothers in particular - within low-income households sometimes reduce their food intake in order to provide more for their children.<sup>23</sup>

In response to the issue of food poverty, the Government has committed in the *Roadmap for Social Inclusion 2020-2025* to develop a programme of work to explore the drivers of food poverty and to identify mitigating actions.<sup>24</sup> This will require coordinating activities across a number of government departments.

The 2019 Survey of Income and Living Conditions (SILC) shows that 149,000 additional people were going without basics in 2019 compared to 2018, despite an increase in average incomes.<sup>25</sup> Of those living below the poverty line, 43 per cent were experiencing enforced deprivation, which means going without basics such as nutritious food.<sup>26</sup> In 2018, the proportion of children experiencing enforced deprivation was one in five but by 2019 this was closer to one in four, representing the largest increase among all age groups.<sup>27</sup>

The UN Committee on the Rights of the Child recommends providing food in school to ensure that children receive a full meal every day as well as

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20 Alessandro Rhyll Demaio, Francesco Branca, *Decade of action on nutrition: our window to act on the double burden of malnutrition*, BMJ Global Health 2017; 3

21 Richard Layte and Cathal McCrory, *Growing up in Ireland Overweight and obesity among 9 year olds*. (DCYA 2011) 33.

22 Society of St. Vincent de Paul, *Stories of Struggle: Experiences of living below the minimum essential standard of living* (SVP 2018).

23 Society of St Vincent de Paul, *"It's the hardest job in the world": An exploratory research study with one-parent families being assisted by the Society of St Vincent de Paul* (SVP 2014).

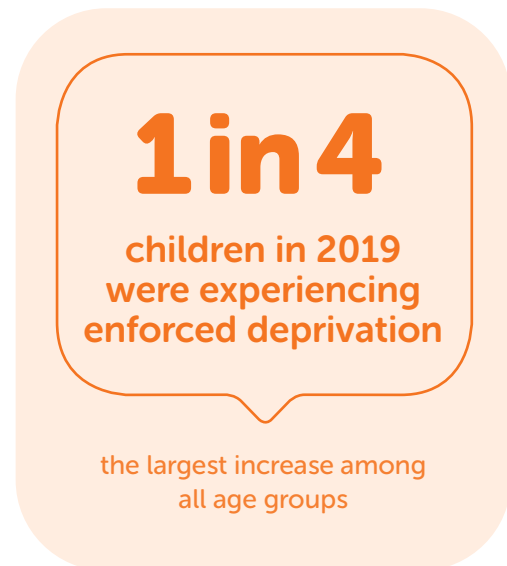
24 Department of Employment Affairs and Social Protection, *Roadmap for Social Inclusion 2020-2025* (DEASP 2020).

25 Central Statistics Office, *Survey of Income and Living Conditions* (CSO 2019) <<https://bit.ly/3onq3AA>> accessed 8 January 2021.

26 *ibid.*

27 Central Statistics Office, *Survey of Income and Living Conditions* (CSO 2019) <<https://bit.ly/3onq3AA>> accessed 8 January 2021.

combining this with education on nutrition and health.<sup>28</sup> Schools are an excellent setting to reach children, teachers, families and the surrounding community.<sup>29</sup> They provide a social environment where children can access and enjoy food, without financial constraints.<sup>30</sup> Generally, there are two approaches to food education and school food: education separated from school meals, and education integrated into the provision of school meals.<sup>31</sup> There is strong evidence from a systematic review of 42 European interventions to promote healthy diet and obesity prevention that multi-component interventions (food availability, education curriculum integration, and parent involvement) had relatively strong effects on dietary improvements among children.<sup>32</sup> The message is that multi-component interventions are more effective than only providing food to children. Ireland is unusual in the European Union (EU) context in not providing a universal school meal programme.<sup>33</sup>



The Department of Social Protection (DSP) funds the School Meals Programme which provides funding towards the provision of food to 1,557 schools and benefits 227,000 children.<sup>34</sup> The objective of the scheme is to provide regular, nutritious food to children who are unable, due to lack of

28 General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) CRC/C/GC/15, para 46.

29 Healthy Food For All, *A Good Practice Guide to School Food Initiatives* (Healthy Food for All 2009).

30 Healthy Food For All, *A Good Practice Guide to School Food Initiatives* (Healthy Food for All 2009).

31 Marije Oostindjer and Jessica Aschemann-Witzel et al, *Are school meals a viable and sustainable tool to improve the healthiness and sustainability of children's diet and food consumption? A cross-national comparative perspective* (2017) *Critical Reviews in Food Science and Nutrition*, 57:18, 3942-3958.

32 Marije Oostindjer and Jessica Aschemann-Witzel et al, *Are school meals a viable and sustainable tool to improve the healthiness and sustainability of children's diet and food consumption? A cross-national comparative perspective* (2017) *Critical Reviews in Food Science and Nutrition*, 57:18, 3942-3958.

33 Marije Oostindjer and Jessica Aschemann-Witzel et al, *Are school meals a viable and sustainable tool to improve the healthiness and sustainability of children's diet and food consumption? A cross-national comparative perspective* (2017) *Critical Reviews in Food Science and Nutrition*, 57:18, 3942-3958.

34 Communication received by Children's Rights Alliance from the Department of Social Protection, 23 December 2020.

good quality food, to take full advantage of the education provided to them.<sup>35</sup>

## ► **What's been achieved for children so far?**

There continues to be a lack of coordination and leadership on the overarching issue of food poverty. In 2019, under the auspices of the National Advisory Group on *Better Outcomes, Brighter Futures*, the Department of Health examined the possibility of establishing a sub-group on food poverty to propose measures to reduce food poverty amongst children and young people in Ireland and to establish food poverty measurement mechanisms.<sup>36</sup> Given that initial scoping took place, this could be built upon to ensure that a single government department holds primary responsibility for the coordination and centralisation of food poverty measures in Ireland.

In September 2019, the DSP launched a hot school meals pilot which involved 37 primary schools benefitting 6,744 students for the 2019/2020 academic year.<sup>37</sup> All primary schools (over 3,000) were invited to apply with 506 schools registering interest, suggesting high demand for the limited pilot. The schools chosen to participate in the pilot were selected randomly, having regard to geographical spread, numbers enrolled, range of suppliers and the overall budget available.<sup>38</sup> The final pilot sample amounted to one per cent of the total primary schools in Ireland.<sup>39</sup>

The pilot was completed in the 2019-2020 school year.<sup>40</sup> In Budget 2020, €4 million was allocated to provide hot food to children currently in receipt of

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35 Heather Humphries TD, Minister for Employment Affairs and Social Protection School Meals Programme Written Answers 14 July 2020 [15434/20].

36 Communication received by the Children's Rights Alliance by the Department of Children and Youth Affairs, 21 December 2018.

37 Heather Humphries TD, Minister for Employment Affairs and Social Protection School Meals Programme Written Answers 14 July 2020 [15434/20].

38 Heather Humphries TD, Minister for Employment Affairs and Social Protection School Meals Programme Written Answers 14 July 2020 [15434/20].

39 Oireachtas Library and Research Services, *Education in Ireland Statistical snapshot* (Houses of the Oireachtas 2020) <<https://bit.ly/2KJXOOu>> accessed 8 January 2021.

40 Communication received by the Children's Rights Alliance from the Department of Social Protection 21 December 2020.

the existing school meals programme consisting of a cold food option.<sup>41</sup> The rollout of this was delayed and did not commence until January 2021 due to the school closures in March 2020 arising from the Covid-19 pandemic. The 37 schools in the pilot were permitted to continue to avail of hot school meals from September 2020 when they reopened.<sup>42</sup> Budget 2021 allocated €5.5 million to support a further scale-up of the project by enabling an extension of hot meals from January 2021 until the end of the year and the DSP is making arrangements to ensure that 35,000 children currently receiving the cold lunch option will receive a hot meal.<sup>43</sup> The universal provision of hot meals in a school setting counters stigma and provides a social environment where children can access and enjoy food without financial constraints.<sup>44</sup>

Generally, the school meals programme does not provide funding to cover school holidays or for days when the school is closed. Due to school closures in March because of the Covid-19 pandemic, funding under the school meals programme was used to support pupils from participating schools who were unlikely to receive nutritious food due to the closures.<sup>45</sup>

In light of Covid-19, funding was available to schools to extend the school meals programme over the summer in recognition of the hardship being experienced by families.<sup>46</sup> The DSP issued a survey in May to establish the level of take-up by schools/organisations in continuing the programme during the closure and found that 1,034 schools continued to provide food supporting 86,000 children.<sup>47</sup>

The Programme for Government committed to 'continue to review and

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41 Heather Humphries TD, Minister for Employment Affairs and Social Protection School Meals Programme Written Answers 14 July 2020 [15434/20].

42 Communication received by the Children's Rights Alliance from the Department of Social Protection 21 December 2020.

43 Communication received by the Children's Rights Alliance from the Department of Social Protection 9 November 2020.

44 Healthy Food for All, *A good practice guide to School Food Initiatives* (Healthy Food for All, 2009).

45 Communication received by the Children's Rights Alliance from the Department of Social Protection 9 November 2020.

46 Heather Humphries TD, Minister for Employment Affairs and Social Protection School Meals Programme Written Answers 14 July 2020 [15434/20].

47 Communication received by the Children's Rights Alliance from the Department of Social Protection 9 November 2020.

expand the rollout of the new Hot School Meals initiative'.<sup>48</sup> The Department engaged the market research agency Behaviour & Attitudes to carry out research on the pilot. As part of the research, they have obtained the opinions of the principals, teachers/Special Needs Assistants, parents and suppliers regarding all aspects of the provision of the hot meals as the outbreak of Covid-19 prevented onsite visits as well as engaging with children.<sup>49</sup> The evaluation findings are complete and are currently being examined by the Department<sup>50</sup> and while the scheme was extended in Budget 2021, it is not clear if there are plans to further extend it to more children. The Programme for Government also committed to 'work across government to address food poverty in children and ensure no child goes hungry'.<sup>51</sup> The Joint Oireachtas Committee on Children and Youth Affairs previously recommended that Government establish clear targets for reducing socio-economic inequalities in childhood obesity, including food poverty, and implement an evaluation framework to monitor the progress.<sup>52</sup> It is positive to see some joint working between departments on the school meals rollout through the development of nutrition standards for the Hot School Meals Scheme,<sup>53</sup> and the launch of the first *Healthy Eating Guidelines for 1-4 Year-Olds, Children's Food Pyramid* in October 2020.<sup>54</sup>

## ► What children need next

Increasing reliance on food banks and charitable support for food costs during the Covid-19 pandemic has demonstrated the challenges facing low-income families, however the institutionalisation of food banks as a response to food

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48 Government of Ireland, Programme for Government, *Our Shared Future* (2020) 96.

49 Communication received by the Children's Rights Alliance from the Department of Social Protection 9 November 2020.

50 *ibid.*

51 Government of Ireland, *Programme for Government: Our Shared Future* (2020) 96.

52 Joint Oireachtas Committee on Children and Young Affairs, *Report on Tackling Childhood Obesity*, (Houses of the Oireachtas, 2018) 4.

53 Communication received by the Children's Rights Alliance from the Department of Social Protection, 21 December 2020. The Department of Health, the Department of Social Protection and the Department of Education and Skills are working together on the development of the standards.

54 Communication received by the Children's Rights Alliance from the Department of Health on 12 January 2021.

insecurity has been widely criticised by international experts.<sup>55</sup> Longer term solutions to food poverty which respond to the multi-faceted nature of this problem are needed. Work needs to recommence as a matter of priority on addressing the drivers of food poverty across Government. The Department of Health is well positioned to lead this work.

The UN Sustainable Development Goals commit the Government to 'end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round by 2030'.<sup>56</sup> The response to food poverty must address accessibility, availability,<sup>57</sup> affordability and awareness. People living in communities with a lack of shops, supermarkets or public transport and who have to regularly shop in local convenience stores can find it more difficult to access healthy fresh foods, highlighting the relationship between low income, housing policy, local development plans, provision of public transport and food poverty.<sup>58</sup> Progressing this commitment in the Programme for Government necessitates moving beyond a focus on solely child poverty, and instead adopting a holistic family-focused approach to the issue of poverty and food poverty.

The full realisation of the Programme for Government commitment to expand the Hot School Meals Initiative hinges on completion of the pilot evaluation and its findings published for transparency. While small scale expansions have taken place, with money being made available in Budgets 2020 and 2021, there needs to be a comprehensive plan put in place as to how the Government will expand the scheme over its term in office. The evaluation should be prioritised to inform decisions being made for Budget 2022 and further rollout. Considering the small scale of the pilot, the evaluation could consider how best to take the learnings forward and scale-up the initiative.

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55 Olivier de Schutter and others 'Food banks are no solution to food poverty' *The Guardian*, 24 March 2019; Martin Caraher and Sinéad Furey 'Are food banks merely a sticking plaster for food poverty?' *RTE News*, 7 February 2019 <<https://bit.ly/3hZqOhA>> accessed 11 January 2021.

56 United Nations '#Envision2030 Goal 2: Zero Hunger' <<https://www.un.org/development/desa/disabilities/envision2030-goal2.html>> accessed 11 January 2021.

57 UN Committee on Economic, Social and Cultural Rights, General Comment No.12 (1999) on the right to adequate food (art. 11) E/C.12/1999/5 para 13.

58 Kimberly Morland et al, 'Obesity prevalence and the local food environment' (2009) *Health and Place* 15(2):491–495.



The evaluation could examine the potential on how to expand the programme to benefit children and young people in an alternative education setting, as well as reaching all school-age children during school holidays to prevent so-called 'holiday hunger'.

Holiday hunger remains a serious concern for children and young people experiencing poverty who rely on school meals. Meal schemes should be extended through the summer months and other holiday periods.<sup>59</sup>

## ➔ Recommendations

- ▶ Identify the lead government department, and working with other relevant departments, develop a programme of work to explore the drivers of food poverty and to identify mitigating actions in line with the commitment in the *Roadmap for Social Inclusion 2020-2025*.<sup>60</sup> Build on the initial scoping work conducted by the Department of Health to establish a sub-group on food poverty under the auspices of the National Advisory Council on Children and Young People.
- ▶ Finalise and publish the evaluation of the Hot School Meals programme as soon as possible.
- ▶ Extend the Hot School Meals programme to all schools participating in the existing meals programme and set out a road map for how the scheme can be expanded to all schools within the lifetime of this Government.

59 Kitty Holland 'Thousands at risk of holiday hunger if school meals dropped' *Irish Times*, 11 June 2020.

60 Department of Employment Affairs and Social Protection *Roadmap for Social Inclusion 2020-2025*. DEASP 2020.

**9**

# **Public Health Obesity Act**

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**Section Grade:**

**C**



## The Programme for Government commits to:

Work with key stakeholders to introduce a Public Health Obesity Act, including examining restrictions on promotion and advertising aimed at children.

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▶ Progress: **Slow**

**'Public Health Obesity Act' receives a C grade. There has been a slight reduction in the overall number of children who are obese or overweight and it is welcome to see this important commitment in the Programme for Government. However, there has been no movement on progressing the commitment to introduce a Public Health Obesity Act.**

## Ireland's duties and responsibilities in international law



Every child has the right to enjoyment of the highest attainable standard of physical health and Governments have an obligation to combat disease and malnutrition through the provision of adequate nutritious food.<sup>1</sup> Children also have the right to an adequate standard of living for their physical, mental, spiritual, moral and social development<sup>2</sup> and States are required to 'take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing'.<sup>3</sup>

The UN Special Rapporteur on the Right to Food has highlighted five priority actions to combat obesity: regulating the sale of 'junk food'; restricting the advertising of 'junk food'; overhauling agricultural subsidies to make healthier foods cheaper than less healthy alternatives; taxing unhealthy products; and supporting local food production so that consumers have access to healthy, fresh and nutritious food.<sup>4</sup>

The International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to an adequate standard of living, including access to adequate and affordable food.<sup>5</sup> Under the UN Sustainable Development Goals (SDGs) the State has committed to 'end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round by 2030'.<sup>6</sup>

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 24.

2 *ibid* Art 27.

3 *ibid* Art 27.

4 Human Rights Council, *Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter* (2012) UN Doc A/HRC/19/59, 17–18.

5 UN International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3 (ICESCR) Art 11.

6 UN Sustainable Development Goals <<https://www.un.org/sustainabledevelopment/sustainable-development-goals/>> accessed 22 January 2021.

## ► What's the context for this commitment?

One fifth of primary school children in Ireland are overweight or obese,<sup>7</sup> a reduction from one quarter in the last measurement in 2012.<sup>8</sup> The experience of overweight and obesity occurs in children and adults at all levels of the socio-economic spectrum and spans all social classes.<sup>9</sup> However, incidence for children is strongly related to the socio-economic status of their parents.<sup>10</sup> While four per cent of three-year-olds from professional or managerial headed households were classified as overweight and obese, this figure was more than double for the children whose parents had never worked.<sup>11</sup> Children attending schools participating in the Delivering Equality of Opportunity in Schools (DEIS) programme, located in areas of concentrated socio-economic disadvantage, have higher levels of overweight and obesity than children in non-DEIS schools.<sup>12</sup> When children's Body Mass Index (BMI) was measured at age nine and again at 13 years, Growing Up in Ireland data found that children in lower socio-economic groups not only experience higher overweight and obesity rates than their advantaged peers, their experience is more profound.<sup>13</sup> This means they are more likely to exceed BMI thresholds, and they are more likely to experience persistent overweight or obesity, this particularly impacts girls.<sup>14</sup>



7 Healthy Ireland, *The Childhood Obesity Surveillance Initiative (COSI) in the Republic of Ireland* (DOH 2020) 17.

8 Department of Health, *A Healthy Weight for Ireland: Obesity Policy and Action Plan 2016–2025* (Stationery Office 2016) 14.

9 Laura D. Howe, 'Childhood overweight: socio-economic inequalities and consequences for later cardiovascular health', *Longitudinal and Life Course Studies*, 2013 Volume 4 Issue 1, 4 – 16; Samantha Doyle, et al, 'Caring for Obese Children- A change in Paradigm' 2017 *Irish Medical Journal*, 4.

10 World Health Organisation, *Obesity and inequities Guidance for addressing inequities in overweight and obesity* (WHO Europe 2014) 4.

11 Growing Up in Ireland, *Key Findings: Infant Cohort (At 3 Years) No. 4 Children's Physical Growth from Birth to Age 3* (DCYA, 2013).

12 MM Heinen, et al, *The Childhood Obesity Surveillance Initiative (COSI) in the Republic of Ireland: Descriptives of childhood obesity risk factors*. (HSE 2016).

13 David Madden, *Childhood obesity and maternal education in Ireland*, Geary WP2016/14 (UCD Geary Institute for Public Policy Discussion Paper Series 2016), <<https://bit.ly/2wr6Ghp>> accessed 14 December 2020.

14 *ibid.*

This suggests that social inequality-related overweight and obesity deepens into childhood, and becomes more entrenched and more gendered.

Obesity has been described as 'one of the most stigmatising and least socially acceptable conditions in childhood'.<sup>15</sup> It can affect children's social and emotional health and their quality of life. Children can be bullied, experience negative stereotypes, discrimination, and social marginalisation due to their weight.<sup>16</sup> Of 111 children participating in an obesity treatment programme in an Irish children's hospital, 63 per cent reported being teased about their weight in the past, almost half of them by their peers with 12 per cent missing days from school as a result of bullying.<sup>17</sup> Thirty per cent of them had learning difficulties and 15 per cent reported developmental delay at some point requiring some intervention, linking the condition with special needs.<sup>18</sup>

The World Health Organisation (WHO) affirms the child's right to health as a governing principle and strategy to act on behalf of the child to reduce the risk of obesity.<sup>19</sup> *Better Outcomes, Brighter Futures, The National Policy Framework for Children and Young People 2014-2020* committed to tackling the issue of childhood obesity through a range of legislative, policy and public awareness initiatives.<sup>20</sup> The UN Special Rapporteur on the Right to Food has highlighted five priority actions to combat obesity: regulating the sale of 'junk food'; restricting the advertising of 'junk food'; overhauling agricultural subsidies to make healthier foods cheaper than less healthy alternatives; taxing unhealthy products; and supporting local food production so that consumers have access to healthy, fresh and nutritious food.<sup>21</sup>

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15 Krushnapriya Sahoo, et al, 'Childhood obesity: causes and consequences', *Family Medicine Primary Care* 2015 Apr-Jun; 4(2): 187–192.

16 *ibid.*

17 Samantha Doyle, D. Cahill, M. Smyth, S. Murphy, 'Caring for Obese Children - A Change in Paradigm', 2017 *Irish Medical Journal*, 4.

18 *ibid* 4.

19 World Health Organisation, *Report of the Commission on Ending Childhood Obesity* (WHO 2016) 8.

20 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020* (DCYA 2014) Commitment 1.1.

21 Human Rights Council, 'Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter' (2012) UN Doc A/HRC/19/59, 17–18.

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**The World Health Organisation (WHO) affirms the child's right to health as a governing principle and strategy to act on behalf of the child to reduce the risk of obesity.**

Advertising influences how much children eat,<sup>22</sup> and can lead to them 'pestering' parents to buy unhealthy products.<sup>23</sup> At 18 months, children can recognise brands, with preschool children demonstrating preferences for branded products.<sup>24</sup> Marketing is closely linked to a globalisation of unhealthy behaviours that influence nutritional opportunities. This is driven by rapidly expanding international trade, that can lead to diets that are higher in processed foods and saturated fats, salt and sugar, and lower in fibre, vitamins and minerals than the traditional diets they replace.<sup>25</sup> The processed food industry 'has been successful in blocking governmental and societal efforts for implementing food policies for obesity prevention', through lobbying for industry voluntary codes and making public commitments to which they do not adhere.<sup>26</sup> This has contributed to poor global progress on obesity prevention.

In February 2018, the Department of Health launched the *Non-Broadcast Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement: Voluntary Codes of Practice*.<sup>27</sup> The voluntary nature of the codes mean that companies have no legal obligations in relation to marketing and advertising and there are no restrictions on how they market their products to children. The Department of Health is working to establish a monitoring mechanism for the voluntary codes of practice.<sup>28</sup>

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22 Emma J Boyland, et al, 'Advertising as a cue to consume: a systematic review and meta-analysis of the effects of acute exposure to unhealthy food and nonalcoholic beverage advertising on intake in children and adults', *The American Journal of Clinical Nutrition*, Volume 103, Issue 2, 1 February 2016, 519–533, <<https://academic.oup.com/ajcn/article/103/2/519/4662876>> accessed 14 December 2020.

23 Gerard Hastings, Laura McDermott, Kathryn Angus, Martine Stead and Stephen Thomson, 'The extent, nature and effects of food promotion to children: a review of the evidence' (WHO 2006); Laura McDermott, Terry O'Sullivan, Martine Stead & Gerard Hastings, 'International food advertising, pester power and its effects' (2015) *International Journal of Advertising*, 25:4, 513-539.

24 Robinson TN, Borzekowski DLG, Matheson DM, Kraemer HC, 'Effects of Fast Food Branding on Young Children's Taste Preferences. *Archives of Pediatrics & Adolescent Medicine* (2007) 161(8), 792–797. <<https://jamanetwork.com/journals/jamapediatrics/fullarticle/570933>> accessed 15 January 2021.

25 Alessandro Rhyll Demaio, Francesco Branca, 'Decade of action on nutrition: our window to act on the double burden of malnutrition' (2017) *BMJ Glob Health*, 3.

26 Boyd Swinburn et al, 'Strengthening of accountability systems to create healthy food environments and reduce global obesity' *The Lancet* 2015; 385: 2534–45.

27 Healthy Ireland, *No-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement: Voluntary Codes of Practice* (Department of Health 2018) <<https://www.gov.ie/en/publication/403956-non-broadcast-media-advertising-and-marketing-of-food-and-non-alcho/>> accessed 15 January 2021.

28 Communication received by the Children's Rights Alliance from the Department of Health, 30 January 2020.



The challenge with voluntary codes is that they rely on self-regulation which may not sufficiently reduce the advertising of unhealthy foods, nor reduce children's exposure to this type of advertising.<sup>29</sup> Ireland is currently engaging with other European Union (EU) countries on a joint action called 'Best-ReMaP' and leading on a work package called 'Best practices in reducing marketing of unhealthy food products to children and adolescents'.<sup>30</sup> This will include the development of an EU-wide harmonised and comprehensive monitoring protocol for reducing unhealthy food marketing to children.<sup>31</sup>

In 2018, the Joint Oireachtas Committee on Children and Youth Affairs recommended the introduction of a statutory code for the advertising and marketing of food and non-alcoholic beverages in the context of non-broadcast media and called for the independent monitoring body to be established as a matter of priority to monitor compliance and the effectiveness of the *Voluntary Codes of Practice*.<sup>32</sup> The Joint Oireachtas Committee on Education and Skills has also recommended that digital marketing aimed at children, by the food and drinks industries, be appropriately regulated to reduce the influence on their eating habits and that advertising on school grounds be banned.<sup>33</sup>

## ► **What's been achieved for children so far?**

The Programme for Government commits to 'work with key stakeholders to introduce a Public Health Obesity Act, including examining restrictions on promotion and advertising aimed at children'.<sup>34</sup> The Department of Health has acknowledged that careful consideration is needed to identify what areas are

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29 S Galbraith-Emami and T Lobstein 'The impact of initiatives to limit the advertising of food and beverage products to children: a systemic review' (2013) 14 *Obesity Reviews* 960 – 74.

30 Communication received by the Children's Rights Alliance from the Department of Health, 12 November 2020.

31 *ibid*

32 Joint Oireachtas Committee on Children and Youth Affairs, *Report on Tackling Childhood Obesity*, (Houses of the Oireachtas, 2018) 7.

33 *ibid*, 16.

34 Government of Ireland, *Programme for Government, Our Shared Future* (2020) 46.

best put on a legislative basis.<sup>35</sup> There are no timelines in place for the drafting of the scheme of a Bill.<sup>36</sup>

*A Healthy Weight for Ireland: Obesity Policy and Action Plan 2016–2025* focuses on prevention of obesity to increase the number of people in Ireland with a healthy weight.<sup>37</sup> The Policy contains a commitment to 'develop, implement and evaluate a code of practice for food and beverages promotion, marketing and sponsorship'.<sup>38</sup>

## ► **What children need next**

While there has been no movement in 2020 towards the introduction of a Public Health Obesity Act, this is in the context of a global health pandemic which is placing incredible strains on the Department of Health and the health services. However, the introduction of restrictions on the promotion of advertising to children can, as we have seen in the context of marketing restrictions in relation to alcohol,<sup>39</sup> take a long time to progress. Consideration should be given to commencing the preparatory work on the Public Health Obesity Bill as a matter of priority to ensure that this commitment is fulfilled during the Government's term in office.

### ➔ **Recommendation:**

- **Commence the preparatory work and initial drafting of the proposed Public Health Obesity Bill.**

35 Communication received by the Children's Rights Alliance from the Department of Health, 12 December 2020.

36 *ibid.*

37 Department of Health, *A Healthy Weight for Ireland: Obesity Policy and Action Plan 2016–2025* (Stationery Office 2016).

38 *ibid* Action 3.2.

39 Children's Rights Alliance, *Report Card 2020*, 60.

# Public Health Obesity Act

## Case Study



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As a former marketer for a food brand, Paul\* knows a lot about how brands market online.

Paul has four children, the eldest of whom is in their teens. Concerned about his own children's exposure to unhealthy food brands online, he has lodged numerous complaints about the marketing of junk food online to the Advertising Standards Authority of Ireland.

Paul is especially concerned about how brands are deliberately misleading young people through health claims and their packaging. For example, how sugared cereals use cartoon YouTube videos on their social media accounts claiming that they had less sugar, even though they are full of chocolate. This complaint was refused.

The complaints also take almost a year to get through the system.

Complaints like Paul's are frequently rejected, highlighting the grave deficiencies with the current regulatory process and the need for progress in establishing a Public Health Obesity Act. The Act would include an examination of restrictions on the promotion and advertising of unhealthy food that is being aimed at children, one of five priority actions to combat childhood obesity as identified by the UN Special Rapporteur on the Right to Food.

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*\* Names and some identifying details have been changed to protect the privacy of the individual and families involved at the heart of this story.*

**10**

# **Family Homelessness**

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**Section Grade:**

**C**



## **The Programme for Government commits to:**

Focus our efforts on reducing the number of homeless families and individuals and work with local authorities and housing agencies to support them into long-term sustainable accommodation.

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▶ Progress: **Some**

**'Family Homelessness' receives a C grade as the Covid-19 pandemic protection measures, such as the ban on rental increases and eviction moratoriums, contributed to almost forty per cent less families experiencing homelessness at the end of 2020, compared to 2019. Although the numbers of families experiencing homelessness declined throughout 2020, there is a significant risk that if these measures are not continued after the public health emergency ends, the progress made during the pandemic will be reversed.**

## Ireland's duties and responsibilities in international law



Under Article 27 of the UN Convention on the Rights of the Child (UNCRC) all children have the right to a decent standard of living that is good enough to meet their physical and social needs and support their development. In cases where parents or carers are unable to provide this, the State must assist by providing 'material assistance and support programmes particularly with regard to nutrition, clothing and housing'.<sup>1</sup> The UN Committee on Economic, Social and Cultural Rights is clear that the right to housing applies to everyone and must be accessible and affordable to all. The right is only fulfilled if the property is habitable, offers security of tenure and has provision of facilities essential for health, security, comfort and nutrition.<sup>2</sup>

The right to housing also comes with a duty to monitor the numbers of people who are homeless and those at increased risk of being disadvantaged with regard to housing.<sup>3</sup> States then have a responsibility to prevent and address homelessness by, for example, increasing housing infrastructure.<sup>4</sup>

Aligned to this, States bear responsibility under Article 16 of the UNCRC to protect the child's private, family and home life. Given homelessness deprives families of their own personal space, state failure to address homelessness through providing appropriate housing, could be considered an interference with the child's right to privacy, as well as the right to a decent standard of living.

Ireland committed to promote, protect and respect children's rights when it ratified the UNCRC in 1992. As part of this, Ireland agreed to be reviewed every five years on its progress in implementing the rights

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3(UNCRC) Art 27.

2 UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 4 on the Right to Adequate Housing (Art 11(1) of the Covenant)' (1991) UN Doc E/1992/23, para 8.

3 *ibid* para 13.

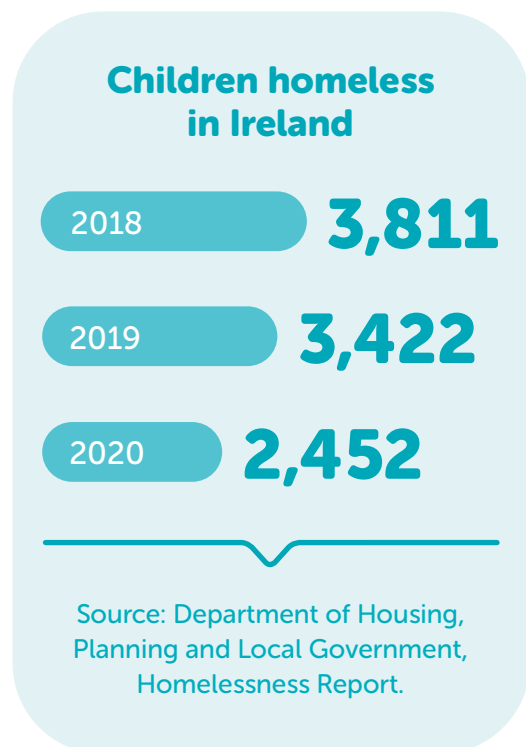
4 UN & Habitat, *The Right to Adequate Housing*, Factsheet No 21/Rev. 1 (Office of the High Commissioner for Human Rights, 2014) 34.

in the Convention. Ireland was last examined by the Committee on the Rights of the Child in 2016. At that time, the Committee expressed several concerns relating to homelessness, including that families with children in Ireland were 'facing significant delays in accessing social housing and frequently living in inappropriate, temporary or emergency accommodation on a long-term basis.'<sup>5</sup> The Committee urged Ireland to increase the availability of social housing and emergency housing support and ensure that the policy response is subject to adequate safeguards, reviews and evaluations.<sup>6</sup>

## ► What's the context for this commitment?

In December 2020, 2,452 children were homeless in Ireland, with most family homelessness occurring in Dublin.<sup>7</sup>

Over the last year, significant progress has occurred in homelessness prevention which, if sustained, could help ensure that all children and families can access adequate housing in line with their right to an adequate standard of living. While child and family homelessness had been rising rapidly since 2014, this trend abated somewhat towards the end of 2019, and has been declining consistently in line with the Covid-19 pandemic protection measures introduced in Spring 2020.<sup>8</sup> This decline was driven by progress in Dublin, however, reductions were observed



5 UN CRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4, para 61.

6 ibid para 62.

7 Communication received by the Children's Rights Alliance from Department Housing, Local Government and Heritage, 13 January 2021.

8 Department of Housing, Local Government and Heritage (DHLGH), 'Homelessness Data' <<https://bit.ly/3op7UCh>> accessed 27 January 2021. For a visual representation see Focus Ireland, 'Latest Figures on Homelessness in Ireland (Family)' <<https://bit.ly/36cay0L>> accessed 13 January 2020.

in all areas bar the North West and South East.<sup>9</sup> There were a third less children experiencing homelessness at the end of 2020 compared to 2019.<sup>10</sup>

A key driver of the decline in homelessness has been the Emergency Measures in the Public Interest (Covid-19) Act 2020, enacted on 27 March 2020, to help restrict the movement of people as part of a national effort to suppress the spread of Covid-19. Additional legislation enacted in August 2020 introduced better protections for tenants by prohibiting rent increases in all cases, and tenancy terminations in all but limited and exceptional cases.<sup>11</sup> These additional protections, coupled with the potential ability to stay temporarily with family or friends for a longer duration given the context of a national lockdown, appears to have led to a drop of twelve per cent on emergency accommodation usage between March and June 2020.<sup>12</sup> One parent families in emergency accommodation saw the largest decrease, falling by almost a quarter.<sup>13</sup> Homeless services recorded a fall in presentations during the pandemic and up to the end of September 2020, fifty-five per cent of families presenting to homeless services were provided with a new tenancy arrangement rather than having to enter emergency accommodation.<sup>14</sup>

There are many routes into homelessness, including lack of affordable housing, poverty, unsupported mental illness, and for women and children in particular, experience of domestic abuse.<sup>15</sup> A key driver of family homelessness in the Irish context is the lack of affordable, secure housing and over-reliance on private market provision. Families who cannot afford market rents can avail of the Rent Supplement or Housing Assistance Payment (HAP), but rent limits have not kept pace with market value and the limits for each have not been

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9 Communication received by the Children's Rights Alliance from Department Housing, Local Government and Heritage, 13 January 2021.

10 *ibid.*

11 Residential Tenancies and Valuation Act 2020.

12 Focus Ireland, 'Focus on Homelessness: Homeless Figures and the Impact of COVID-19' <<https://bit.ly/3iXzVQf>> accessed 27 January 2021.

13 *ibid.*

14 Communication received by the Children's Rights Alliance from Department Housing, Local Government and Heritage, 13 November 2020.

15 Chris M. Sullivan & Linda Olsen Common ground, complementary approaches: adapting the Housing First model for domestic violence survivors, (2016) *Housing and Society* 43:3, 182-194.



reviewed since 2016 and 2017 respectively.<sup>16</sup> Vulnerable families are often left with no option but to pay an unofficial 'top-up' directly to the landlord in addition to their differential rent contribution to the local authorities.<sup>17</sup>

Although local authorities have the ability to increase HAP in cases where the baseline payment is insufficient to secure suitable accommodation, evidence indicates that not all households who would benefit from accessing a higher rate of HAP are actually receiving it.<sup>18</sup> Furthermore, under the Housing (Miscellaneous Provisions) Act 2014, HAP is considered to be a social housing support and consequently, households in receipt of a payment under the scheme are not eligible to remain on the main housing waiting list. However, the Department of Housing, Local Government and Heritage has confirmed that ministerial directions have been issued to ensure that, should they so choose, HAP recipients can avail of a move to other forms of social housing support through a transfer list, and should get full credit for the time they spent on the waiting list and be placed on the transfer list with no less favourable terms than if they had remained on the main social housing waiting list.<sup>19</sup>

The human right to adequate housing is derived from the right to an adequate standard of living.<sup>20</sup> The denial of a child's right to this adequate standard of living, including the right to adequate housing, can have a significant adverse impact on their development and wellbeing. Global evidence reviews have found that homelessness in children and young people is associated with multiple negative physical, mental, and behavioural health outcomes, with the duration of homelessness compounding and elevating the risk of adverse outcomes.<sup>21</sup> Children who experience homelessness are also more likely to

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16 Citizens Information Board, 'Rent Supplement Limits' <<https://bit.ly/2YmYlJi>> accessed 27 January 2021; S.I. No. 56/2017 - Housing Assistance Payment (Amendment) Regulations 2017.

17 Threshold and Society of St Vincent de Paul, *The Housing Assistance Payment (HAP): Making the Right Impact?* (Threshold and SVP 2019) 11-16.

18 *ibid.*

19 Communication received from Department of Housing, Local Government and Heritage, 13 November 2020.

20 UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 4 on the Right to Adequate Housing (Art 11(1) of the Covenant)' (1991) UN Doc E/1992/23 para 1.

21 Laura E Gultekin et al, 'Health risks and outcomes of homelessness in school-age children and youth: a scoping review of the literature' (2020) *Journal of School Nursing* 36(1): 10– 18.

have developmental and learning delays and poorer academic attainment.<sup>22</sup>

In Ireland, one parent families make up a disproportionate number of homeless families.<sup>23</sup> Although the right to housing is absolute and should be accessible to all, there is significant discrimination in the housing market, with one parent families, people with disabilities and people from lower socio-economic backgrounds facing high levels of discrimination in accessing housing.<sup>24</sup> Similarly, evidence highlights that people of minority ethnicities in Ireland experience significant discrimination in accessing housing, with black people 3.5 times more likely to experience discrimination than white Irish people and more likely to be represented among the homeless population.<sup>25</sup> Given the housing crisis, those with refugee status and people granted leave to remain have found it difficult to leave Direct Provision,<sup>26</sup> and as of June 2020, approximately 13 per cent of residents are people who have actually had their claim for protection processed and been recognised as refugees or granted leave to remain.<sup>27</sup> Traveller families also face significant barriers to accessing their right to housing and are at greater risk of experiencing homelessness than settled families.<sup>28</sup>

Official statistics published by the Department of Housing, Local Government and Heritage only give a partial picture of the prevalence of homelessness in Ireland given the specific remit of this department.<sup>29</sup> They do not

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22 Saskia D'Sa et al, 'The psychological impact of childhood homelessness—a literature review', (2020) *Irish Journal of Medical Science*.

23 Department of Housing, Local Government and Heritage, 'Homelessness Report, November 2020' <<https://bit.ly/3cg7iwn>> accessed 27 January 2021.

24 Raffaele Grotti, Helen Russell, Éamonn Fahey, Bertrand Maître, *Discrimination and Inequality in Housing in Ireland* (IHREC and ESRI 2018) ix-x.

25 *ibid* 72-73.

26 Dr. Muireann Ní Raghallaigh, Maeve Foreman and Maggie Feeley, *Transition from Direct Provision to life in the community: The experiences of those who have been granted refugee status, subsidiary protection or leave to remain in Ireland* (Irish Refugee Council 2016) 39-42; Shamim Malekmian, 'Some Ex-Asylum Seekers Say They're Stuck in Direct Provision Because Dublin Landlords Won't Accept Them', *The Dublin Inquirer*, 30 September 2020.

27 Minister of State for Equality, Immigration and Integration, David Stanton TD, Written Answers, Direct Provision System, 16 June 2020 [11157/20].

28 Independent Expert Group on behalf of the Minister of the Department of Housing, Planning and Local Government, *Traveller Accommodation Expert Review* (DHPLG 2019).

29 Focus Ireland, 'Latest figures on homelessness in Ireland' accessed 2 December 2019; Colette Bennett 'Rebuilding Ireland for Everyone: A review of the government's housing strategy for young and old' in Brigid Reynolds and Sean Healy (eds) *The Challenges of Success: Addressing population growth in Ireland* (Social Justice Ireland 2019).

include families that are homeless but are accommodated in own-door accommodation or transitional housing. Neither do they include women and children in domestic violence refuges, asylum seekers living in emergency accommodation, or people who have been granted asylum or some other form of protection but cannot find accommodation outside the Direct Provision system. Families who have had to leave their home and are couch-surfing or relying on friends or family for emergency assistance are also not captured in the official monthly statistics although the Minister for Housing, Local Government and Heritage has indicated that of the 68,693 households on the social housing waiting list in June 2019, 'approximately twenty per cent of the people on the waiting list currently live with their parents and a further eight per cent are listed as living with relatives/friends'.<sup>30</sup>

## ► **What's been achieved for children so far?**

### **Reducing the number of homeless families**

Between November 2019 and November 2020, the number of families in emergency accommodation fell by forty per cent, resulting in 651 fewer families and 1,300 fewer children becoming homeless.<sup>31</sup> However, it is of concern that the protections which appear to have played a seminal role in reducing the numbers were lifted at points where the pandemic was under control, indicating that these measures, although working to address homelessness, are considered extraordinary and temporary in nature due to the particular circumstances of the Covid-19 emergency.

Between August and mid-October 2020, the evictions moratorium was lifted, and evictions which had been delayed were completed, except in certain cases of rent arrears.<sup>32</sup> Landlords could terminate tenancies on the same six grounds, for example, refurbishment of property, and with the same notice

30 Minister for Housing, Local Government and Heritage, Darragh O'Brien TD, Written Answers: Housing, 1 December 2020 [39568/20].

31 Communication received by the Children's Rights Alliance from Department of Housing, Local Government and Heritage, 14 January 2021.

32 Government of Ireland, *The Residential Tenancies and Valuation Act 2020: What this means for landlords and tenants* (2020) <<https://bit.ly/3pnLVwF>> accessed 27 January 2021.

periods as prior to the Covid-19 crisis. Similarly, from August onwards, rent increases could again be introduced, although only for tenants who were not financially impacted by Covid-19.<sup>33</sup> Tenants who experienced a financial loss due to Covid-19 are protected from rent reviews and eviction on the grounds of rent arrears until 12 April 2021.<sup>34</sup>

The reintroduction of Level 5 restrictions led to a welcome restoration of the eviction moratorium, however this protection only applies while this highest level of lockdown remains in place.<sup>35</sup> Although movement is still restricted under Levels 3 and 4, the only protection for families is for those facing eviction on the grounds of rent arrears accrued due to a Covid-19 related loss of income. Families can still be evicted into homelessness on other grounds such as if the landlord is selling the property or if a family member moves in – which are the largest single reasons for family homelessness.<sup>36</sup>

In 2020, the majority of exits from homelessness were to the private rental market, with local authority and approved housing bodies accounting for just a quarter of cases.<sup>37</sup> It is worth noting that the significant decline in family homelessness may have been partially attributable to the increased supply of housing in the private market and less demand due to the pandemic; in November 2020 the number of rental properties in Dublin was the highest it had been since 2011.<sup>38</sup> This may mean that families may be particularly adversely affected when demand for rental housing stock increases once again as Ireland emerges from the public health emergency and the tourist and student markets return.

Rights-based policy analysis has highlighted that as long as the Housing Assistance Payment (HAP) remains the primary mechanism to access housing

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33 Government of Ireland, *The Residential Tenancies and Valuation Act 2020: What this means for landlords and tenants* (2020) <<https://bit.ly/3pnLVwF>> accessed 27 January 2021.

34 Planning and Development, and Residential Tenancies Act 2020.

35 Focus Ireland, 'New figures show a rise in the number homeless to 8,737 in October as Focus Ireland warns that the Government eviction freeze must fully protect all renters', Press Release, 1 December 2020 <<https://bit.ly/2YgFkZh>> accessed 19 January 2021.

36 *ibid.*

37 Department of Housing, Local Government and Heritage, 'Homeless Quarterly Progress Report: Quarter 3 2020' <<https://bit.ly/3cgCVGg>> accessed 30 November 2020.

38 Ronan Lyons, 'The Daft.ie Rental Price Report: An analysis of recent trends in the Irish rental market 2020 Q3' <<https://bit.ly/2YkA86I>> accessed 20 January 2021, 19.



**Homelessness  
in children and  
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support, with construction of social housing a secondary objective, families experiencing homelessness will continue to be structurally excluded and liable to experience competition, discrimination, and exclusion within the private rental market.<sup>39</sup> A review of international evidence suggests affordable rents and legal protections for tenancy rights are key components of effective homelessness prevention strategies.<sup>40</sup> Therefore, although the numbers of families experiencing homelessness has declined significantly throughout 2020, there is a significant risk that unless there is reconfiguration of Irish housing policy towards the provision of social housing by local authorities, and a continuation of measures that allow for greater rental security and eviction protection, the progress made during the pandemic will be reversed.

### **Work with local authorities and housing agencies to support families into long-term sustainable accommodation.**

Under international human rights law, States have a responsibility to prevent and address homelessness by, for example, increasing housing infrastructure.<sup>41</sup> To date, meaningful delivery against this right has been limited, and the central issues of scarce housing stock, high market rents and the insufficiency of subsidies alone to mitigate the negative impact of this, persist. Previous Governments' actions on homelessness have been largely reactive and narrow in focus, with the lion's share of homeless funding being used for emergency accommodation rather than tenancy sustainment or resettlement support.<sup>42</sup>

Policy on family homelessness specifically has focussed on ensuring that they receive initial support in facilities specifically designed to meet their needs, rather than generic emergency accommodation. This has led to the establishment of family hubs which have onsite cooking and laundry facilities for families, with access to support staff and some activities for children. In September 2020, there were 33 family hubs in operation providing

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39 Rory Hearne, Mary Murphy, 'An absence of rights: Homeless families and social housing marketisation in Ireland' (2018) *Administration* 66(2) 27-28.

40 Niall Pleace *Preventing Homelessness: A Review of the International Evidence* (Simon Communities of Ireland 2019) 7.

41 UN & Habitat, *The Right to Adequate Housing*, Factsheet No 21/Rev. 1 (Office of the High Commissioner for Human Rights, 2014) 34.

42 Focus Ireland, 'Review of 7 years of spending on homelessness shows it's time to change' <<https://bit.ly/2YgRQaX>> accessed 19 January 2021.

accommodation for up to 700 families.<sup>43</sup> The introduction of hubs has contributed to significant progress in reducing the need for commercial hotels and B&Bs with 475 fewer families accommodated in such facilities in Dublin compared to the same date in 2019 – a sixty four per cent fall in the number of families accommodated in commercial hotels in the past year.<sup>44</sup> While family hubs are an important first response, they do not represent long-term sustainable accommodation – yet in practice families appear to spend prolonged periods of time in these centres. Despite only being designed for short-term use, in 2019 the Minister confirmed family hubs were being used for an average of six months by families,<sup>45</sup> and research with children and parents living in family hubs suggests a number of problems, including a lack of space and privacy.<sup>46</sup>

Positively, the new Government has expressed a commitment to better understand the needs of families using emergency accommodation, and the Housing Agency has recently been contracted by the Department to undertake research into long-term homelessness amongst families.<sup>47</sup> This research will aid in moving these families from emergency accommodation to suitable long-term accommodation and help to further understand the reasons they remain in emergency accommodation and the best ways of supporting them to exit homelessness.

In recognition of the scale of the housing crisis in Ireland, the new Government through Budget 2021, has increased total investment in housing by a quarter, with total investment for 2021 standing at €3.3 billion.<sup>48</sup> Some €218 million is being allocated to support exits from homelessness and €22 million to homelessness programmes, such as day services and emergency

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43 Minister of State for Housing for Heritage and Electoral Reform, Malcolm Noonan TD, Dáil Debates, Topical Issue Debate: Homeless Accommodation, 10 September 2020.

44 Communication received by the Children's Rights Alliance from Department of Housing, Local Government and Heritage, 13 November 2020.

45 Ombudsman for Children's Office, *No Place Like Home: Children's views and experiences of living in Family Hubs* (OCO 2019) 14.

46 *ibid.*

47 Communication received by the Children's Rights Alliance from Department of Housing, Local Government and Heritage, 13 November 2020.

48 Department of Housing, Local Government and Heritage, '€5.169 billion budget for Department of Housing, Local Government and Heritage press release 13 October 2020', <<https://bit.ly/3t2rwzK>> accessed 14 January 2021.

accommodation. The Government has also signalled its commitment to a durable solution by financing the development of 9,000 affordable homes and adding 12,750 homes to social housing stock, and expanding coverage of the HAP in line with escalating demand.<sup>49</sup>

## ► **What children need next**

To enable effective collaboration between housing agencies, local authorities and central government, all parties must recognise housing as a fundamental right which everyone is entitled to. The previous Government resisted calls for the right to housing to be inserted into the Constitution, but promisingly the current Programme for Government has committed to a referendum on this issue.<sup>50</sup> Ireland has a duty, in line with its ratification of the UNCRC, to ensure that socio-economic rights, such as the fundamental right to housing, are fully incorporated in domestic law and policy. Independent analysis based on population rates estimates that to meet housing demand, 34,000 new dwellings must be built each year over the next decade.<sup>51</sup> Measured against this, the Budget 2021 promise of 21,750 new affordable and social homes is still much lower than what is required and would fail to deliver the right to housing for all citizens and residents in Ireland.

The Government can build on the progress made in 2020 by ensuring that as we emerge from the Covid-19 pandemic, families are not once again reliant on temporary, expensive, and precarious market provision. Long-term and durable solutions to the housing crisis requires rethinking the current approach of marketisation of social housing, and the effectiveness of the HAP model – particularly when not keeping pace with market value – to support low-income families at risk of homelessness. Sustainable and durable progress is needed on homelessness prevention. This requires development of adequate housing supply, affordable rents, backed by strong legal protections for tenants, and ancillary rapid-rehousing services for those families who

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49 *ibid.*

50 Government of Ireland, *Programme for Government, Our Shared Future* (2020) 121.1.

51 Thomas Conefrey and David Staunton, 'Population Change and Housing Demand in Ireland', Central Bank of Ireland Economic Letter, Vol. 2019, No. 14 (Central Bank of Ireland 2019).



have already become homeless.<sup>52</sup> Unless there is a cohesive policy at a strategic level that recognises and mitigates the multi-faceted drivers of family homelessness, many children will continue to experience insecure or inadequate housing, with wide-ranging adverse impacts on their health and development.<sup>53</sup>

Aligned to this, much still needs to be done to redress the barriers that marginalised communities face in accessing their fundamental right to housing. Homeless Traveller and Roma families, and refugee families, require consideration both in relation to emergency accommodation and long-term social housing. Travellers are more likely to be homeless than the general population, with some Travellers experiencing difficulty in accessing emergency accommodation and a high level of hidden homelessness and overcrowding among Traveller families.<sup>54</sup> In one recent study by Focus Ireland, Traveller families represented a disproportionate number of homeless families; they made up seven per cent of homeless families while making up less than one per cent of the general population.<sup>55</sup> In recognition of these challenges, the previous Government published a Traveller Accommodation Expert Review report<sup>56</sup> which the current Government is in the process of implementing by establishing a dedicated Programme Board, including Traveller representatives.<sup>57</sup> This work will include consideration of the recommendation to commission research to better understand homelessness in the Traveller population.<sup>58</sup> There are some signs of progress, with 2020 being the first year since 2014 that the €14.5 million funding provided for Traveller-specific accommodation was fully drawn down by local

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52 Niall Pleace *Preventing Homelessness: A Review of the International Evidence* (Simon Communities of Ireland 2019) 7.

53 Amy Clair, 'Housing: an Under-Explored Influence on Children's Well-Being and Becoming' (2019) *Child Indicators Research* 12:609–626.

54 Independent Expert Group on behalf of the Minister of the Department of Housing, Planning and Local Government, *Traveller Accommodation Expert Review* (DHPLG 2019).

55 Alice Emily Long, Sarah Sheridan, Letizia Gambi, Daniel Hoey, *Family Homelessness in Dublin: Causes, Housing Histories, and Finding a Home* (Focus Ireland 2019) 24.

56 Independent Expert Group on behalf of the Minister of the Department of Housing, Planning and Local Government, *Traveller Accommodation Expert Review* (DHPLG 2019).

57 Communication received by the Children's Rights Alliance from Department of Housing, Local Government Heritage, 13 November 2020.

58 *ibid.*

authorities.<sup>59</sup> It is unclear, however, whether this funding is being used for new accommodation, refurbishment of existing units or Covid-19 related work on sites.<sup>60</sup> It is critical that funding is used to support the development of new culturally-appropriate accommodation to ensure all families have homes that meet their needs.

Roma families face similar barriers and their particular housing needs must receive careful consideration as well. Since the pandemic began there are reports that it has been increasingly difficult to accommodate homeless Roma families in emergency accommodation if they were not already registered in PASS (Pathway Accommodation and Support System) and this has exacerbated with time.<sup>61</sup> Furthermore, one of the qualifying criteria for allocation of social housing is employment,<sup>62</sup> but given that national needs assessments suggest that just seventeen per cent of Roma are employed,<sup>63</sup> most Roma will be ineligible for social housing support.

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59 *ibid.*; Kitty Holland, 'Almost €15m spent on Traveller housing, the largest annual spend in decades' *The Irish Times*, 23 December 2020.

60 *ibid.*

61 Communication received by the Children Rights Alliance from Pavee Point, 16 October 2020.

62 Department of Housing, Local Government and Heritage, Circular Housing 41/2012 - Access to Social Housing Supports for non-Irish nationals.

63 Pavee Point & Department of Justice and Equality *Roma in Ireland: A National Needs Assessment* (Pavee Point 2018) 75.

## ➔ **Recommendations:**

- ▶ Commit to a date for the referendum on the right to housing and provide clear and accessible information to the public on how a constitutional change would affect housing policy in Ireland.
- ▶ Ensure that if the extraordinary protective measures are lifted as Ireland emerges from the Covid-19 public health emergency, they are lifted gradually so that families who were protected from evictions during the pandemic do not face a cliff-edge.
- ▶ Build on the progress that was made during the Covid-19 emergency measures, in particular in relation to the reduction in the numbers of families needing emergency accommodation, by adopting a preventive approach which prioritises development of long-term affordable and social housing stock.

# 11

# Youth Homelessness

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Section Grade:

# D



## The Programme for Government commits to:

Develop a National Youth Homelessness Strategy.

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▶ Progress: **None**

'Youth Homelessness' receives a D grade. While the Government has appointed a High-Level Homelessness Taskforce which will consider prevention and how to respond to youth homelessness as part of its remit, no progress has specifically been made on the development of a strategy. Crucial questions related to scope, departmental responsibilities, children and youth involvement, and timeframes are unknown.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) is clear that all children have the right to a decent standard of living<sup>1</sup> and to be safeguarded from any form of abuse.<sup>2</sup> In cases like youth homelessness, where the child is without an obvious caregiver, the State should provide the child with such protection and care as is necessary for their wellbeing.<sup>3</sup> Social policy and practice should reflect a government commitment to meeting child protection rights, and housing is recognised as an area which can have significant bearing on the prevention of violence to children.<sup>4</sup> The UN Committee on the Rights of the Child is also clear that homeless adolescents are particularly vulnerable to experience institutional and interpersonal violence and that States must provide special protections to these children to mitigate risk of abuse and exploitation.<sup>5</sup>

The Committee is clear that interventions into youth homelessness are most beneficial when the children are active partners in assessing needs and devising solutions, rather than passive beneficiaries.<sup>6</sup> Authorities and decision-makers should recognise that children living on the streets, while vulnerable, can also be highly resilient,<sup>7</sup> and must consider children's views.<sup>8</sup>

Ireland committed to promote, protect and respect children's rights when it ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992. As part of this, Ireland agreed to be reviewed

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27.

2 *ibid* Art 19.

3 UNCRC, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 35.

4 UNCRC, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, CRC/C/GC/13, para 43.

5 UNCRC, General Comment No. 4 (2003) Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, para 23, 36.

6 UNCRC, General Comment No. 21 (2017) on children in street situations, CRC/C/GC/21, para 33.

7 *ibid* para 28.

8 *ibid* para 45.

every five years on its progress in implementing the rights in the Convention.

In 2016, the Committee expressed concern about the inadequate support provided to care leavers, particularly those who have experienced homelessness and recommended that Ireland amend the Child Care Act, 1991 to adequately address the needs of children who have experienced homelessness.<sup>9</sup>

## ► What's the context for this commitment?

The Programme for Government commits to develop a new Youth Homelessness Strategy with a related commitment to 'ensure that aftercare and transition plans and protocols are developed for vulnerable homeless people or those at risk of homelessness leaving hospital, state care, foster care, prison, or other state settings'.<sup>10</sup>

The last Irish *Youth Homelessness Strategy* published in 2001 by the Department of Health and Children focussed primarily on children under 18 who were not with their families,<sup>11</sup> and it is currently unclear what age range the new youth homelessness strategy will cover.

Homelessness can infringe on a child's right to an adequate standard of living and potentially jeopardise their safety and wellbeing. Like all forms of homelessness, youth homelessness is multi-faceted, but can be classified into three main categories:

- ▶ Rooflessness – rough sleeping, with emergency accommodation provided on a night-by-night basis;
- ▶ Houselessness – staying in emergency accommodation, bed and breakfast (B&B) accommodation, supported or unsupported temporary accommodation which is not durable or offering security; or

9 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 43-44.

10 Government of Ireland, Programme for Government, *Our Shared Future* (2020) 55.

11 Department of Health and Children, *Youth Homelessness Strategy* (DHC 2001).

- ▶ Insecure and inadequate housing - volatile situations in which a young person may be at risk of re-entering emergency shelters or sleeping rough, for example, returning to an unsupportive family home, housing without secure tenancy rights or sofa/couch surfing with friends.<sup>12</sup>

For children under 18, Section 5 of the Child Care Act 1991 provides that where a child is homeless without their family and Tusla, the Child and Family Agency, is satisfied that there is no accommodation available for the child that they 'can reasonably occupy', then Tusla has responsibility to take the child into care and provide accommodation for them. While in some cases the family issues which led to the child becoming homeless can be resolved swiftly through Tusla intervention, in other cases, the conflict may be protracted.<sup>13</sup> At the end of the third quarter of 2020 there were six young people accommodated under Section 5.<sup>14</sup>

Notably, Government statistics highlight that the number of young adults aged 18 and older who became homeless in Ireland more than doubled between 2015 and 2019.<sup>15</sup> In November 2020, official statistics suggest that 745 young people aged 18-24 were homeless<sup>16</sup> but given this data is based on those accessing emergency accommodation, and many more may not seek formal support, official records are likely to be a significant underestimate. Furthermore, while these official figures for youth homelessness fell during the first few months of the Covid-19 pandemic – likely due to the measures



12 FEANTSA, *European Framework for Defining Youth Homelessness* (FEANTSA 2019) <<https://bit.ly/2Y6F7YC>> accessed 22 January 2021.

13 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 7 January 2021.

14 *ibid.*

15 Irish Coalition to End Youth Homelessness, *Call for government action on homelessness among young adults* (2019) <<https://bit.ly/2LNkxtO>> accessed 15 January 2021.

16 Department of Housing, Local Government and Heritage, *Homelessness Report November 2020*, <<https://www.housing.gov.ie/housing/homelessness/other/homelessness-data>> accessed 25 January 2021.



the Government took to prevent people entering homelessness during the pandemic, including a ban on evictions and rent increases<sup>17</sup> – homelessness for those aged 18 to 24 increased between June and September in line with the reopening of the economy and a return to semi-normalcy.<sup>18</sup> Given this challenging external environment, it is welcome that Tusla issued guidance stating that all young people who were due to leave care during the public health crisis would be supported to remain in their placement where the foster parent and child agree.<sup>19</sup>

Evidence suggests that children and young people have a different pathway into homelessness and their own distinct needs, and therefore prevention and responses to youth homelessness should be considered separately to broader homelessness strategies.<sup>20</sup> Children and young people can become homeless for many different reasons, including experience of poverty, family conflict or abuse,<sup>21</sup> lack of acceptance and support for sexual or gender identity,<sup>22</sup> or experience of leaving state care.<sup>23</sup> For young people in Ireland, systemic factors such as the rising costs of rents, the scarcity of properties and bias towards older tenants, are having a significant adverse impact and driving youth homelessness.<sup>24</sup> Children and young people experiencing homelessness may therefore be experiencing multiple rights violations and marginalisation beyond the immediate issue of access to secure housing.

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17 Emergency Measures in the Public Interest (Covid-19) Act 2020.

18 Department of Housing, Planning & Local Government, *Homelessness Reports June/July/August/September*, <<https://www.housing.gov.ie/housing/homelessness/other/homelessness-data>> accessed 5 November 2020.

19 Tusla, *Guidelines for COVID-19 for young adults in receipt of an aftercare service*, (Tusla 2020) <<https://bit.ly/363NQ2a>> accessed 22 January 2021.

20 FEANTSA, *European Framework for Defining Youth Homelessness* (FEANTSA 2019) <<https://bit.ly/2Y6F7YC>> accessed 22 January 2021.

21 Lonnie Embleton, Hana Lee, Jayleen Gunn, David Ayuku, Paula Braitstein, 'Causes of Child and Youth Homelessness in Developed and Developing Countries: A Systematic Review and Meta-analysis' (2016) *JAMA Paediatrics*; 170(5).

22 Dr Aideen Quilty and Prof Michelle Norris, *A Qualitative Study of LGBTQI+ Youth Homelessness in Ireland* (Focus Ireland and Belong To 2020).

23 Jo Dixon, Jade Ward and Mike Stein *Brighter, Futures for Careleavers: A Consultation on Outcomes and Aftercare for Young People Leaving Care in Ireland* (Focus Ireland 2018).

24 Focus Ireland *Young People – Ireland's 'Forgotten Homeless'* (June 2018). <<https://www.focusireland.ie/young-people-irelands-forgotten-homeless/>> accessed 5 November 2020.

## ► What's been achieved for children so far?

On appointment, the Minister for Housing, Local Government and Heritage, Darragh O'Brien TD established a High-Level Homelessness Taskforce to provide a forum for engagement with key organisations working to address homelessness.<sup>25</sup> While this Taskforce will input into the Youth Homelessness Strategy,<sup>26</sup> work on strategy development has not formally commenced and crucial information around objectives, scope, departmental responsibility, children and youth involvement, and timeframe for completion are still not publicly available.

The Department of Housing, Local Government and Heritage has acknowledged that the development of this Strategy will require input from a range of other departments, agencies and other sectors, as well as a more public conversation, and has confirmed they are currently engaged in preliminary scoping work which will develop through 2021.<sup>27</sup> Development of a youth homelessness prevention and intervention strategy was a key recommendation made by the Dublin Lord Mayor's Task Force on Homelessness in a report prepared in December 2020 and the Minister has since met with the Lord Mayor in relation to this.<sup>28</sup>

## ► What children need next

The priority now is for the Government to clearly outline how it will progress strategy development over the course of the year to come. It is vital that the Government adopts an integrative approach to policymaking that recognises the necessity of effective joint working between the departments with

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25 Minister for Housing, Darragh O'Brien, Dail Debates, Written Answers, Youth Homelessness Strategy, 6 October 2020 [28664/20]; Minister for Housing, Darragh O'Brien, Dail Debates, Written Answers, Youth Homelessness Strategy, 13 October 2020 [29879/20]. The membership of the taskforce comprises the Dublin Region Homeless Executive, Crosscare, Depaul, Focus Ireland, the Peter McVerry Trust, Dublin Simon Community and Threshold.

26 Communication received by the Children's Rights Alliance by Department of Housing, Local Government and Heritage, 13 November 2020 and 13 January 2021.

27 *ibid.*

28 Dublin City Council, 5 key recommendations from 'Lord Mayor's Task Force on Homelessness' Press Release 14 December 2020 <<https://bit.ly/3pavyDR>> accessed 13 January 2021.

responsibility for housing, health, education, and social care, and which sees children and young people as active partners in strategy design. All public bodies charged with implementation of the Strategy must be clear on their obligation under the Public Sector Equality and Human Rights Duty 'to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work'.<sup>29</sup>

During strategy development, a rights-based approach should be deployed which recognises young people experiencing homelessness as equal partners and respects their views.<sup>30</sup> The UN Special Rapporteur on the Right to Housing has argued that that elimination of youth homelessness is a top human rights priority.<sup>31</sup> In 2020, the UN Human Rights Council called on States 'to take positive measures with a view to prevent and eliminate homelessness by adoption and implementing laws, administrative orders, cross-sectional strategies and programmes at all levels that are, among others, gender-, age- and disability-responsive and based on international human rights law'.<sup>32</sup> This reinforces the need for Ireland's youth homelessness strategy to be underpinned by all rights contained in the Universal Declaration of Human Rights (UDHR), with the standards laid out in the UNCRC applied to children under the age of 18 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) applied to everyone including children and young people over the age of 18.<sup>33</sup>

As such, the strategy must also be developed in line with the guiding principle of non-discrimination, set out in Article 2 of the UNCRC and Article 2 of the ICESCR.<sup>34</sup> At each stage, it is vital that all stakeholders are alert and

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29 Irish Human Rights and Equality Commission, *Implementing the Public Sector Equality and Human Rights Duty* (IHREC 2019) 2.

30 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 12.

31 Canada Without Poverty, *A Way Home, Youth Rights! Right Now! Ending Youth Homelessness: a Human Rights Guide*, (Canada Observatory on Homelessness, 2016) 4.

32 UN General Assembly, Resolution adopted by the Human Rights Council on 19 June 2020 43/14. Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context (2020) UN Doc A/HRC/RES/43/14, para 1(j).

33 Canada Without Poverty, *A Way Home, Youth Rights! Right Now! Ending Youth Homelessness: a Human Rights Guide*, (Canada Observatory on Homelessness, 2016) 11-12.

34 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 2; International Covenant on Economic, Social and Cultural Rights (ICESCR) (13 December 1991) Article 2.

responsive to the particular needs of different cohorts of young people who may have differing routes into homelessness and unique experiences of it. The independent evaluation of the 2001 Youth Homelessness Strategy found that there should have been greater consideration of the needs of minority groups, such as Travellers, ethnic groups and LGBT (Lesbian, Gay, Bisexual and Transgender) youth groups.<sup>35</sup> Building on this, recent Irish research highlights that while young LGBTI+ young people face similar risks of homelessness to their heterosexual and cis-gendered peers,<sup>36</sup> such as leaving care, family breakdown and the shortage of affordable accommodation, the experience of coming out and/or transitioning can also be a trigger for homelessness.<sup>37</sup> Enhanced capacity to support the rights and diversity of LGBTI+ homeless service users was an action of the *LGBTI+ Youth Strategy*,<sup>38</sup> and an implementation report on that Strategy is due to be published in early 2021 which will audit progress against this action.<sup>39</sup> It is vital that the proposed Youth Homelessness Strategy is synergised with the LGBTI+ Youth Strategy and is able to address the additional barriers that these young people face.

Recent Irish research into youth homelessness found that family circumstances were the main driver of homelessness amongst young people.<sup>40</sup> This finding coheres with international research which points to conflict or breakdown in the family home, combined with substance misuse, mental health issues, and educational problems, being a key contributor to entry into homelessness.<sup>41</sup> It is important to remember that conflict between parent and child can occur in both birth and foster families. Given that these stressors do not occur in a vacuum, but are instead a product of broader

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35 Sean Denyer, Aisling Sheehan and Avery Bowser, *Every Child a Home A review of the implementation of the Youth Homelessness Strategy* (DCYA 2013) 4-6.

36 'A person whose gender identity and gender expression is aligned with the sex observed and recorded at birth' Dr Aileen Quilty Prof Michelle Norris *A Qualitative Study of LGBTQI+ Youth Homelessness in Ireland* (Focus Ireland 2020), p.9 <<https://bit.ly/397vMps>> accessed 22 January 2021.

37 Dr Aileen Quilty Prof Michelle Norris *A Qualitative Study of LGBTQI+ Youth Homelessness in Ireland* (Focus Ireland 2020) <<https://bit.ly/397vMps>> 57.

38 Department of Children and Youth Affairs, *National LGBTI+ Youth Strategy 2018-2020: LGBTI+ young people: visible, valued and included* (DCYA 2018), action 13.2.

39 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth 7 January 2021.

40 Clíodhna Bairéad, Michelle Norris, *Youth Homelessness in the Dublin Region: A profile of young, single emergency accommodation users in 2016, 2017 and 2018* (Focus Ireland: 2020).

41 Kaitlin Schwan, David French, Stephen Gaetz, Ashley Ward, Jennifer Akerman & Melanie Redman, *Preventing youth homelessness An international review of evidence* (Wales Centre for Public Policy: 2018).

structural and systemic factors, averting youth homelessness requires engagement with macro-level drivers such as inadequate housing stock or social protection, and delays in accessing mental health and substance misuse support.<sup>42</sup> Aligned to this, a cohesive and coordinated strategy should be accompanied by appropriate budgetary allocation for prevention and early intervention services given the important role child protection and welfare services, as well as family support and youth services, play for children and young people at risk of, or who are already, homeless, which was also a main finding of the previous youth homelessness strategy evaluation.<sup>43</sup>

The Strategy must explicitly work to better understand and address the reasons why children who have experienced family conflict, abuse and neglect, and/or who have been in state care, are at heightened risk of homelessness and should identify any other groups of young people who disproportionately experience, or are at risk of, homelessness. In particular, the previous youth homelessness strategy evaluation found that the needs of older adolescents and those at transition stage warrant particularly close attention to ensure that these young people do not fall between child and adult services.<sup>44</sup> This remains a major issue seven years after that evaluation was published. In 2019, accommodation was the main overriding advocacy issue which children in care and young people with care experience contacted Empowering People in Care (EPIC) for assistance with.<sup>45</sup> There are two legal and practice issues which increase the risk that young vulnerable adolescents in and on the edge of care becoming homeless. Firstly, eligibility thresholds for aftercare plans are restrictive, meaning some young people who could benefit from support are disqualified, and secondly, the fact that provision of an aftercare plan does not guarantee access to the necessary services - in this case, appropriate accommodation. Since 1 September 2017, young people leaving care at age 18 have the right to an aftercare plan prepared by Tusla, which provides assistance, including arrangements for accommodation for

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42 Kaitlin Schwan, David French, Stephen Gaetz, Ashley Ward, Jennifer Akerman & Melanie Redman, *Preventing youth homelessness An international review of evidence* (Wales Centre for Public Policy: 2018).

43 Sean Denyer, Aisling Sheehan and Avery Bowser, *Every Child a Home A review of the implementation of the Youth Homelessness Strategy* (DCYA 2013) 4-6.

44 *ibid.*

45 *EPIC Advocacy Report 2019* (EPIC, forthcoming 2021).

young people up to the age of 21 who have been in care.<sup>46</sup> However, only children who have spent 12 months in the care of the State between the ages of 13 to 18 are eligible for this. While older adolescents who experience a family breakdown at age 17 may receive housing support from Tusla under Section 5 of the Child Care Act, they will not meet the 12-month eligibility threshold for aftercare, meaning no support can be provided to them after they turn 18.<sup>47</sup> Furthermore, even for those young people who are eligible for a plan, there is no mechanism to ensure that the provisions in the plan are actually provided, as the statutory entitlement is to a plan rather than a service or good. Indeed, there is a lack of supported or semi-supported accommodation which can assist young people as they transition out of care, and some young people report that student accommodation providers do not accept the Housing Assistance Payment (HAP) as a form of partial payment for accommodation.<sup>48</sup> These issues are placing young people at increased risk of homelessness and may partially explain why many young care-experienced people are seeking assistance from EPIC to find and secure appropriate accommodation to meet their needs.<sup>49</sup>

It is crucial that the proposed Strategy gives equal consideration to how the health and education rights of homeless youth can be supported. Young people experiencing homelessness are at an elevated risk of mental health concerns compared to their housed peers,<sup>50</sup> and thus, attention must be given to how crisis and out-of-hours support can be provided to young people experiencing homelessness. Also, and as outlined in the previous strategy's evaluation, close consideration should be given to how children and young people in precarious accommodation can be supported to continue in

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46 Communication received by Children's Rights Alliance received from Department of Housing, Local Government and Heritage, 13 November 2020.

47 TUSLA, *National Aftercare Policy for Alternative Care* (TUSLA 2017) <[https://www.tusla.ie/uploads/content/4248-TUSLA\\_National\\_Policy\\_for\\_Aftercare\\_v2.pdf](https://www.tusla.ie/uploads/content/4248-TUSLA_National_Policy_for_Aftercare_v2.pdf)> accessed 15 January 2021. Section 45 of The Child Care Act 1991 places a statutory duty on Tusla to form a view in relation to each person leaving care as to whether there is a "need for assistance" and if it forms such a view, to provide services in accordance with the legislation and subject to resources. This legislative provision is strengthened by The Child Care Amendment Act 2015.

48 Communication received by the Children's Rights Alliance from EPIC, 13 January 2021.

49 EPIC, *Advocacy Report 2019* (EPIC 2021).

50 Staci Perlman, Joe Willard, Janette E. Herbers, J.J. Cutuli, and Karin M. Eyrich Garg 'Youth Homelessness: Prevalence and Mental Health Correlates', 2014, *Journal of the Society for Social Work and Research* 5:3.

education.<sup>51</sup> For these aspects, it is vital that the strategy development involves the Department of Health, Tusla and the Department of Education.

Finally, the Strategy must be evidence-based and should engage with international best practice. One approach which has garnered global recognition is the *Housing First for Youth* framework which was developed for children and young people aged 13-24 in Canada and has since been adopted in several European countries.<sup>52</sup> This approach to ending youth homelessness is premised on the principle that housing is a human right and that adequate housing is a precondition for recovery. The model decouples provision of housing from service engagement so young people can access their right to housing without conditionality, with wrap-around support provided and in line with trauma-informed principles. In Ireland, the model has been used with care leavers in Limerick and Cork in a collaboration between Focus Ireland and Tusla.<sup>53</sup> The previous Government committed to a Housing First model for tackling homelessness more broadly and this approach underpinned policy.<sup>54</sup> With regard to youth homelessness, it will be critical to have an evidence-based and youth-specific strategy which is championed across Government and supported by the necessary resources to enable effective implementation.

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51 Sean Denyer, Aisling Sheehan and Avery Bowser, *Every Child a Home A review of the implementation of the Youth Homelessness Strategy* (DCYA 2013) 4-6.

52 Stephen Gaetz, *This is Housing First for Youth: A Program Model Guide* (Canadian Observatory on Homelessness 2017); Stephen Gaetz, *This is Housing First for Youth: Europe: A Program Model Guide* (Canadian Observatory on Homelessness Press 2019).

53 Triona O'Connor, *Housing First for Youth Service: Support for Young people Leaving care and at risk of Homelessness* powerpoint presentation Tusla, Focus Ireland <<https://bit.ly/2Mg4iVE>> accessed 22 January 2021.

54 Dublin Region Homeless Executive, *Housing First National Implementation Plan 2018-2021*, (DRHE, September 2018).

## ➔ Recommendations

- ▶ Publish as a top priority the objectives, scope, departmental responsibility, and timeframe for completion of the Youth Homelessness Strategy.
- ▶ Consult and partner with young people who have been affected by homelessness when designing the strategy to ensure it is grounded in and responsive to their lived experience.
- ▶ Ensure that the Youth Homelessness Strategy is aligned with the National Youth Strategy and the LGBTI+ Strategy in particular, and builds on the learnings from both of these consultation processes.
- ▶ Learn from international best practice in youth homelessness prevention and response, and consider a Housing First model with provision for person-centred care and community support.
- ▶ Reconsider eligibility criteria for aftercare plans, particularly for 16 and 17-year-olds who may become homeless at this transition stage, but who will not have met the five-year threshold of care-experience to benefit from support after the age of 18.



# Youth Homelessness

## Case Study



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The number of young adults becoming homeless in Ireland has doubled between 2015 and 2019. Here is the story of 18-year-old Noah\* who became homeless at the height of the Covid-19 pandemic.

Noah was delighted to move into his own home in March 2020, after years in a foster home. He also started attending a hospitality industry training course in a third level institute.

He secured private rented accommodation with the understanding from his landlord that the lease was open ended. However, after just six months, the landlord evicted Noah with little notice. Noah now found himself homeless. His security deposit was not returned and he had no choice but to return to his foster parents' home.

Noah's foster parents contacted his aftercare worker in Tusla, the Child and Family Agency and our member EPIC for support. Both worked together to engage with emergency housing departments through the local council. Supply of emergency accommodation was extremely limited which led to Noah using his aftercare allowance to rent B&B and hotel rooms until a solution was found.

Using his allowance to pay for hotel accommodation, rather than go homeless, meant that Noah was unable to save for a deposit for any new accommodation. He eventually made the decision to sleep in a tent on the streets in order to scrape the money together for longer-term, private, rented accommodation.

Meanwhile, EPIC looked to get financial support for Noah through the Daffodil Foundation fund and his aftercare workers sought support through their office. Noah agreed to pay this money back in instalments over time. The Daffodil Foundation awarded Noah €250 towards a deposit and first month's rent.

Having spent three weeks homeless, Noah was finally able to move into new accommodation after his circle of support found him suitable, private rented accommodation.

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*\* Names and some identifying details have been changed to protect the privacy of the individual and families involved at the heart of this story.*

**12**

# Children in Direct Provision

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Section Grade:

**C+**



## The Programme for Government commits to:

Ending the Direct Provision system and replacing it with a new International Protection accommodation policy centred on a not-for-profit approach.

We will:

- Publish a White Paper by the end of 2020, informed by the recommendations of the Expert Group, which will set out how this new system will be structured and the steps to achieving it.
- In the short term, act on interim recommendations from the Chair of the Expert Group to improve conditions for asylum seekers currently living in the system. This includes vulnerability assessments, the right to work, the ability to apply for drivers' licences and bank accounts, an independent inspection process, measures to reduce the length of time in processing decisions, mental health services and the training of managers of Direct Provision Centres.
- Implement the measures identified by the Expert Group to ensure that international protection applications are dealt with and brought to finality as quickly as possible, while always ensuring fair procedure and a human rights-based approach.

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▶ Progress: **Steady**

'Children in Direct Provision' receives a C+ given its public commitment to take forward the recommendations of the Catherine Day Report, particularly the introduction of independent centre inspections and own door accommodation, which if implemented could have a significant impact on the lives of children and young people in the asylum system. The critical next step is to publish the blueprint for system transformation by February 2021 as promised.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) requires States to assist all children seeking refugee status and ensure they can access the full range of convention rights including rights to health, housing, education and an adequate standard of living.<sup>1</sup> Ancillary to this, States are also obligated to pay particular attention to children experiencing trauma by giving appropriate protection and the special support necessary for recovery under Article 39. These rights apply to children who enter Ireland with their families and unaccompanied asylum-seeking children. Article 20 recognises that States have a duty to provide care and protection to children who are separated from their families. The Committee on the Rights of the Child is clear that equal standards of protection must be provided to every child under 18, infants and adolescents alike, and that child protection and welfare actors should take primary responsibility for children in the context of international migration.<sup>2</sup> Reception conditions for those awaiting status determination must provide adequate space and privacy for children and their families.<sup>3</sup>

Ireland's progress against meeting these Convention rights was last examined by the Committee on the Rights of the Child in 2016. The Committee expressed several concerns that children seeking asylum in Ireland were experiencing disadvantage, highlighting that numerous Direct Provision centres were not equipped to support the needs of families and the rights of children; there was no independent inspectorate to ensure children's rights were safeguarded and promoted in centres; and the that weekly allowance payment for asylum-seeking children did not reflect the cost of living in Ireland.<sup>4</sup>

1 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 22.

2 Committee on the Rights of the Child and Committee on the Protection of the Rights of all Migrant Workers *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return* (2017) CMW/C/GC/4-CRC/C/GC/23 para 3 and para 13.

3 *ibid* para 50

4 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 65.

The Committee noted that Ireland should strengthen its measures to ensure that children in an asylum-seeking or refugee situation can access the same support services as Irish children. The Committee recommended that Ireland:

- ▶ Ensure that all centres support the education and social development of children and provide child protection services and culturally appropriate support;
- ▶ Introduce independent inspection of centres; and
- ▶ Increase the child refugee allowance to align with the cost of living.<sup>5</sup>

## ▶ What's the context for this commitment?

The system of Direct Provision for those seeking international protection - housing and subsistence provided through segregated, institutional accommodation centres - was introduced in Ireland in April 2000. In 2020, there were 44 accommodation centres nationwide some of which are commercially owned and operated through a for-profit model, while others are state-owned facilities using private contractors to deliver key services.<sup>6</sup> In October 2020, approximately one in every five applicants for international protection was a child, with 1,137 children in the system.<sup>7</sup>

Direct Provision was introduced 20 years ago through a chain of ministerial and civil service circulars, driven by concerns that imminent changes to asylum support in Britain would lead to greater numbers of people seeking asylum in Ireland.<sup>8</sup> Direct Provision has not been subject to independent inspections since its inception. The Ombudsman for Children's Office has only

5 *ibid* para 66.

6 Department of Justice and Equality, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DOJE 2020) 20; Irish Government Economic and Evaluation Service Unit, Department of Justice and Equality, *Direct Provision: Overview of current accommodation expenditure, Spending Review 2019* (2019) 51

7 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2021.

8 Dr Liam Thornton, 'The Rights of Others: Asylum Seekers and Direct Provision in Ireland' *Irish Community Development Law Journal*, 3(2) (2014).

been able to receive complaints from asylum-seeking children and young people since 2017 in relation to accommodation and services.<sup>9</sup>

Sustained opposition to this system on human rights grounds has led to some policy reform. In 2010, Ireland's acceptance rate of just 1.3 per cent of those seeking international protection was the lowest in the European Union (EU)<sup>10</sup> and prolonged delays in processing applicants meant individuals, including children, were spending several years living in Direct Provision.<sup>11</sup> The UN Committee on the Rights of the Child, as well as several other domestic bodies,<sup>12</sup> expressed concern that Direct Provision centres were not suitable for children's needs and that significant changes were required. The Committee recommended that the Government ensure that facilities are appropriate for young children and families; enhance child protection services and ensure that children's payment is increased to meet their needs.<sup>13</sup>

Increased oversight and the provision of clear recommendations has led to accelerated reform. *Better Outcomes Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* recognised refugee and asylum-seeking children as a particularly vulnerable group and pledged to safeguard and promote their welfare and tackle discrimination and intolerance.<sup>14</sup> This recognition coincided with significant changes to asylum policy, including the introduction of a single procedure for status determination in 2016 aimed at reducing the length of time applicants

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9 Ombudsman for Children's Office 'Ombudsman for Children can now investigate complaints from those in Direct Provision' Press Release 3 April 2017 <<https://bit.ly/2Md3Doj>> accessed 16 November 2020.

10 UNHCR, *IHREC Designate Roundtable on the Asylum process and Direct Provision System: Challenges and Solutions from a Human Rights and Equality Perspective* (2014).

11 Reception and Integration Agency, *Annual Report 2013*, (RIA 2014) 12.

12 Health Information and Quality Authority (HIQA), *Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007* (2015) <<https://bit.ly/3aal4N9>> accessed 20 January 2021; Department of Justice and Equality, *Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* (2015); Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (2019).

13 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4, para 66.

14 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (Department of Children and Youth Affairs 2014) 139 -140.

spend in Direct Provision;<sup>15</sup> the extension of the right to work in 2017;<sup>16</sup> the transposition of the EU Recast Reception Conditions Directive<sup>17</sup> into Irish law in 2018 setting out binding minimum standards for reception conditions, including rights relating to healthcare, accommodation, employment and education;<sup>18</sup> the development of the 2019 *National Standards for accommodation offered to people in the protection process* which aim to standardise the quality of care in all accommodation centres irrespective of location;<sup>19</sup> and an increase in the residents' weekly allowance to €38.80 per adult and €29.80 per child in 2019.<sup>20</sup> Families can also access the annual Back to School Clothing and Footwear Allowance Scheme and the Exceptional Needs Payment scheme for assistance with necessary costs, such as buggies and clothing.<sup>21</sup>

Both the transposition of the EU Recast Reception Conditions Directive into Irish law and the introduction of the *National Standards for accommodation offered to people in the protection process* are crucial steps towards enabling policy reform through a rights-based approach. The *National Standards* addresses the rights and needs of children, through for example, the requirement to provide families with own door accommodation, dedicated space for educational activities, access to cooking facilities and age-appropriate information and engagement with children on matters affecting them.<sup>22</sup> Across all areas, service providers are also obliged to act in the best interests of the child in line with the UNCRC.<sup>23</sup> The *National Standards* will help

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15 The International Protection Act 2015 was signed into law on 30 December 2015.

16 Department of Justice, 'Ministers Flanagan and Stanton announce enhanced access to the labour market for asylum seekers' Press Release 27 June 2018 <<https://bit.ly/3iZ5xVB>> accessed 26 January 2021.

17 European Commission, 'Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of application for international protection (recast)' *Official Journal of the European Union* L180/96.

18 European Communities (Reception Conditions) Regulations 2018, SI 230/2018.

19 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (DJE, 2019).

20 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

21 *ibid.*

22 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (Department of Justice and Equality 2019) see Theme 4: Accommodation; Standard 4.6; Standard 6.1.9; Theme 5: Food, Cooking and Catering Facilities.

23 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 3.



to ensure that there is uniformity in service provision, and have the ability to improve quality, challenge underperformance and provide oversight.<sup>24</sup>

## ► **What's been achieved for children so far?**

The Government has committed, during its five-year term, to end the Direct Provision system and will replace it with a new International Protection accommodation policy. To achieve this, it has made five specific interim commitments which are examined in detail here.

### **Progress interim recommendations of Catherine Day Advisory Group**

In December 2019, the previous Government established a new *Expert Group on the Provision of Support, including Accommodation, to Persons in the International Protection Process (Asylum Seekers)*, chaired by former Secretary General of the European Commission, Dr Catherine Day. In contrast to the Working Group on asylum, chaired by former High Court Judge, Bryan McMahon, this new group was explicitly asked to consider 'new ways in which we can better meet the needs of asylum seekers'<sup>25</sup> whereas the former group was concerned with 'the identification of improvements to the existing system rather than the identification of alternatives'<sup>26</sup>

In October 2020, the Government published the *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (the Day Report)* which made a series of recommendations that consider how Direct Provision can be improved in the interim while it is phased out. The Report outlined recommendations around the decision-making timeframe for international protection applications

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24 Michele Clarke, *Briefing Paper on the Inspection of Direct Provision* (Department of Justice and Equality 2015) 7.

25 Department of Justice and Equality, 'Ministers Flanagan and Stanton announce establishment of Expert Group on Direct Provision' Press Release, 28 December 2019 <<https://bit.ly/3qYb8OP>> accessed 28 January 2021.

26 Department of Justice and Equality, *Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* (DJE 2015) 12.

and what the new reception accommodation policy should look like – with respect to 2018 Regulations and *National Standards* - which will replace the private Direct Provision model, by mid-2023.<sup>27</sup> A guiding principle of the work of the Advisory Group was to promote integration of those seeking international protection into local communities from reception onwards.<sup>28</sup> In light of this, the Report recommends a fixed deadline of 12 months for all status decisions and appeals, and provision of own-door accommodation within three months of an application, operationalised through an allowance like the Housing Assistance Payment (HAP), with access to income supports in line with Irish social welfare payments.<sup>29</sup> The provision of own-door accommodation goes some way towards ensuring that the right to protection and maintenance of family life is upheld for children in the asylum system.<sup>30</sup> However, given the challenges in accessing housing and the discrimination that people who have gone through the protection process already face in accessing private rented accommodation, establishing a parallel and distinct system may exacerbate inequalities rather than alleviate them.<sup>31</sup>

The Day Report makes specific recommendations for children including the development of a comprehensive orientation programme comprising of medical screening and vulnerability assessments and then if needed, special supports for children and those with special needs.<sup>32</sup> Importantly, the programme would also provide for a social worker to work with families during their time in the initial orientation phase in a centre, helping them to prepare for life in Ireland and to make referrals to follow-on services.<sup>33</sup> The Report also recommends that children are provided with an induction

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27 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DoJ 2020) 5.

28 *ibid* 8.

29 *ibid* 10-14.

30 Committee on the Rights of the Child and Committee on the Protection of the Rights of all Migrant Workers *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (2017) CMW/C/GC/4-CRC/C/GC/23* para 27.

31 MASI - the Movement of Asylum Seekers in Ireland, 'Statement on the publication of the Catherine Day Advisory Group report on ending Direct Provision' Press Release, 21 October 2020 <<https://bit.ly/3crvb3Y>> accessed 28 January 2021.

32 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DoJ 2020) 13, 61.

33 *ibid* 148.



programme including language supports to prepare them for attending school, however, it is sparse on recommendations surrounding how to improve their experience of school and there is limited consideration of the role youth services could play. At present, allocation of resources to schools to support the experience and attainment of children with additional needs is based on the profile of the school and the particular needs of children in the school community, including a proportion of children with learning and literacy difficulties arising from English as an Additional Language (EAL) needs.<sup>34</sup> Crucially, the Report has recommended that the Health and Information Quality Authority (HIQA) be given statutory powers to inspect reception accommodation centres and ensure that the new national standards are implemented.

The Government has welcomed the recommendations of the Day Report and agreed to progress interim recommendations, prioritising independent inspections and vulnerability assessments.<sup>35</sup>

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34 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 20 January 2021.

35 Department of Children, Equality, Disability, Integration and Youth, 'Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work' Press Release, 21 October 2020 <<https://bit.ly/3pnMDKu>> accessed 13 November 2020.

## Independent inspections

Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman TD, has confirmed that HIQA will be the inspection body for reception accommodation, and work is underway to determine how this will be rolled out.<sup>36</sup> This is a very welcome development given HIQA’s experience and expertise in conducting independent inspections and monitoring residential health and social care settings. It will provide crucial accountability and ensure that children’s rights are adhered to across the systems in line with the *National Standards*.<sup>37</sup> Expanding HIQA’s remit will also help to ensure the recommendations of the UN Committee on the Rights of the Child are taken forward. The Department of Children, Equality, Disability, Integration and Youth is working with the Department of Health and HIQA on preparations for HIQA assuming the role of monitoring centres against the *National Standards*, which came into effect on 1 January 2021.<sup>38</sup> They are not automatically legally binding on all centres but will be included as contractual obligations in future contracts agreed with the providers of accommodation centres.<sup>39</sup>

## Vulnerability assessments

Ireland committed to carrying out vulnerability assessments within 30 days when it adopted the EU Reception Conditions Regulations July 2018.<sup>40</sup> This is a statutory obligation which Ireland should already be meeting so the Government has agreed to expedite these assessments.<sup>41</sup> The Day Report has recommended these should be introduced promptly and be offered to all

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36 *ibid.*

37 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (Department of Justice and Equality 2019) see Theme 4: Accommodation; Standard 4.6; Standard 6.1.9; Theme 5: Food, Cooking and Catering Facilities.

38 Communication received by the Children’s Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

39 *ibid.*

40 European Communities (Reception Conditions) Regulations 2018, S.I. No. 230/2018 s 8.

41 Department of Children, Equality, Disability, Integration and Youth, ‘Minister O’Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work’ Press Release, 21 October 2020) <<https://bit.ly/3pnMDKu>> accessed 13 November 2020.

asylum seekers within 30 days of their arrival, at the latest by 2023.<sup>42</sup> This is another critical step towards ensuring that children's lived experience of Direct Provision is improved in the interim and goes some way towards recognising the State's obligation to support children experiencing trauma.<sup>43</sup> As a new model of international protection is introduced, increased emphasis must be put on how the State can support the socio-emotional and mental health needs of asylum-seeking children and their families. Asylum-seeking and refugee children are at significant increased risk of psychological distress,<sup>44</sup> and it is vital that on arrival in Ireland, a comprehensive needs assessment is in place to ensure that appropriate support is identified and can be provided in a timely manner. This will require effective multi-agency working and coordination to ensure there is joined-up support and that children are not disadvantaged in accessing their full range of rights without discrimination.<sup>45</sup>

It is critical that these vulnerability assessments apply a strength-based approach in line with a person-centred model of care. Narratives around victimhood or vulnerability are unlikely to be helpful and do a disservice to the perseverance and tenacity of children who either alone, or with their families, have travelled thousands of kilometres, often in perilous conditions. While the Report recommends a single assessment on entry to Ireland, assessments should not be a once-off element of an induction package given that resilience and vulnerability are not static concepts, and the particular needs of the child may change over time. For example, it is well-documented that the difficulties in adjusting to life in a new country while experiencing post-immigration stressors such as poverty and deprivation, or social isolation, can

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42 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DoJ 2020) 74.

43 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 39.

44 Bronstein I and Montgomery P, 'Psychological distress in refugee children: a systematic review' (2011). *Clinical Child and Family Psychology Review* 14(1).

45 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 2. For example, evidence from the UK suggests that refugee and asylum-seeking youth do not receive comparable levels of support to British children; it has been estimated that over 90 per cent of migrant and refugee children deemed in need of mental health services never receive them – this is in part due to concerns about service accessibility and stigma. See Fazel M, Garcia J and Stein A, 'The right location? Experiences of refugee adolescents seen by school-based mental health services' (2016) 21 *Clinical Child Psychology and Psychiatry* 368.

compound trauma.<sup>46</sup> If the State is committed to a rights-based approach to reception for people seeking international protection, it is vital that assessment and support is considered in an ongoing and iterative manner in line with the State's duties under the EU Reception Conditions Directive.<sup>47</sup>

While it is still unclear when vulnerability assessments will be rolled out and what form they will take, it is positive that the International Protection Accommodation Service has recently engaged Barnardos to provide child development training to all accommodation providers to ensure Direct Provision centre staff are aware of the impact of trauma on children and understand how it may inform their behaviour.<sup>48</sup>

## Emergency accommodation

The Day Report also highlights the use of inappropriate emergency accommodation as a key area of concern. Due to limited capacity in existing accommodation centres, the State has been using 28 Temporary Emergency Accommodation Centres, primarily hotels, to house 1,527 asylum-seekers.<sup>49</sup> In December 2020, 205 children were in emergency accommodation.<sup>50</sup>

Given that many of these sites operate on a commercial basis as hotels or guesthouses,<sup>51</sup> not all staff have training on the particular needs of those seeking international protection.<sup>52</sup> This lack of awareness is compounded by the inability of all these sites to meet children or parents' rights, particularly in relation to independent cooking facilities and appropriate private leisure space. Children living in emergency accommodation have experienced difficulty in

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46 Vostanis P, 'Meeting the mental health needs of refugees and asylum seekers' (2014) *British Journal of Psychiatry* 204(3); Vostanis, P. 'New approaches to interventions for refugee children' (2016) *World Psychiatry* 15(1).

47 European Communities (Reception Conditions) Regulations 2018, S.I. No. 230/2018 s 8.1b.

48 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

49 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DoJ 2020) 118.

50 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

51 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DoJ 2020) 101.

52 *ibid* 20.



**At present, allocation of resources to schools to support the experience and attainment of children with additional needs is based on the profile of the school and the particular needs of children in the school community, including the proportion of children with learning and literacy difficulties arising from English as an Additional Language (EAL) needs.**

accessing their education rights, which is another reason for ending this form of accommodation, the Day Report acknowledges.<sup>53</sup>

It is welcome that the Department of Children, Equality, Disability, Integration and Youth has reduced the number of emergency accommodation centres in operation in 2020 from 44 to 28.<sup>54</sup> Some additional emergency centres were opened during the year in the context of Covid-19 to allow for a reduction in numbers sharing rooms and to provide better capacity for self-isolation within a centre where so advised by the Health Service Executive.<sup>55</sup> A new centre comprising own-door accommodation for up to 35 families opened in Galway city in September 2020 and another such centre is due to open in 2021 in Letterkenny for up to 60 families.<sup>56</sup> These are positive developments, and the State must continue to increase system capacity during the transition period to ensure that use of emergency accommodation is phased out, given the unsuitability of this type of accommodation, particularly for children.

## Experience of school

The Day Report reiterates that children between the ages of five and eighteen should be educated in mainstream schools in the community, with additional language supports provided as needed and special arrangements made for children with special needs.<sup>57</sup> It also highlights that specific training opportunities should be provided for teachers working in schools with children who are seeking international protection.<sup>58</sup> These are all recommendations which could be progressed in 2021 and it is incumbent on the Government to action these in the short-term, rather than waiting for system transition. It is key that children attend school as early as possible when they arrive in Ireland as any significant break in access to education 'may negatively affect a child's educational experience... as well as their chances

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53 *ibid* 78.

54 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

55 *ibid*.

56 *ibid*.

57 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DoJ 2020) 13.

58 *ibid*.



of a successful integration'.<sup>59</sup> At present, Tusla, the Child and Family Agency's Education Welfare Officers (EWOs) identify families who may need assistance in finding school places for their children and can also provide support to families in accommodation centres should issues arise in school.<sup>60</sup> However, the Children's Rights Alliance believes that there needs to be a comprehensive school induction pack developed for all asylum-seeking children to ease and support their transition into school life in Ireland.

Earlier intervention and prevention are predicated on the timely identification of needs. Since 2017, schools have had greater autonomy to determine how best to use their special education allocation based on the needs of their student community identified through school profile data.<sup>61</sup> The profiled allocation takes account of the extent of the school's literacy needs, including where these needs arise due to language difficulties.<sup>62</sup> However, a report commissioned by the Children's Rights Alliance on the needs of children and young people coming to Ireland under the International Refugee Programme found that schools and educational services need more support in assessing the academic abilities and needs of young refugees independent from language.<sup>63</sup> Providing access to English as an Additional Language (EAL) and learning support is central to refugee children and young people's right to education and it is vital that the allocation schools receive from central government under the new model allows for this targeted support. In order to ensure equality of opportunity, provision and access needs to be equal for all children.<sup>64</sup> The Children's Rights Alliance believes all children should receive an assessment of their needs prior to entering the school system. This should include an assessment of any language or learning support needed, as well

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59 Rosa De Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendation* (UNHCR 2006) 86.

60 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

61 Neil Kenny, Selina McCoy and Georgiana Mihut, 'Special education reforms in Ireland: changing systems, changing schools' (2020) *International Journal of Inclusive Education* <<https://bit.ly/39X7f5Q>> accessed 13 January 2021.

62 Communication received by the Children's Rights Alliance from the Department of Education and Skills, 20 January 2021.

63 Muireann Ní Raghallaigh, Karen Smith and Jennifer Scholtz, *Safe Haven. The Needs of Refugee Children Arriving in Ireland through the Irish Refugee Protection Programme: An Exploratory Study, Executive Summary* (Children's Rights Alliance 2019) 6.

64 *ibid.*

as any emotional or psychological support a child will need in school in line with vulnerability assessment(s). On foot of this, a suite of resources should be available to support children in the school system including adequate English language support, access to the National Education Psychological Services and mental health supports, and access to home support for learning including, but not limited to, home language tuition.

The provision of comprehensive information and support to schools and educational services, through toolkits or information packs and access to interpreters, is key to promoting best practice, creating inclusive educational environments and easing the transition to school for young refugees.<sup>65</sup> The Day Report recommends that 'specific training opportunities should be provided for teachers working in schools receiving children'.<sup>66</sup> Educational settings are also important sites for identifying and responding to socio-emotional and psychological needs and education professionals should have access to trauma-awareness training.<sup>67</sup> It is also vital that schools are given additional support and guidance on the necessity of developing an inclusive and anti-racist culture which can enable asylum-seeking and refugee children to thrive in the school community.

### **Swift decision-making on international protection applications**

The International Protection Act 2015 introduced a new single procedure for examining all international protection applications which helped to reduce delays and time spent in the asylum system. Covid-19 has adversely impacted decision-making timeframes: prior to the pandemic, initial decision-making on non-priority cases took approximately 12 months, however, by the third quarter of 2020 the median processing time was 19 months from the date of application.<sup>68</sup> Notably, decision-making timeframes do not align perfectly with

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65 *ibid.*

66 Government of Ireland, *Report of the Advisory Group on the provision of support, including accommodation, to persons in the internal protection process* (Government Publications 2020) recommendation 5.4.

67 Muireann Ní Raghallaigh, Karen Smith and Jennifer Scholtz, *Safe Haven. The Needs of Refugee Children Arriving in Ireland through the Irish Refugee Protection Programme: An Exploratory Study, Executive Summary* (Children's Rights Alliance 2019) 6.

68 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 6 November 2020.

length of stay in Direct Provision, and at 21 months,<sup>69</sup> the average duration in Direct Provision is too long, particularly in the context of a global pandemic. Conditions in centres are not conducive to social distancing as highlighted in a survey of 400 protection applicants which found that two in every five respondents were sharing a room with a non-family member and almost half were sharing a bathroom with a non-family member.<sup>70</sup> This inability to socially distance led to 55 per cent reporting they felt unsafe during the lockdown.<sup>71</sup>

The Day Report, which was written during the Covid-19 pandemic, recognised that the system is not equipped for long-term stays in reception centres, and the new model should reflect that 3,500 people will seek international protection in Ireland each year and their applications must be reviewed swiftly, in a time-bound way.<sup>72</sup> Given this, the Advisory Group recommended that first decisions be taken within six months and that appeals be decided within a further six months to ensure that during the transition period, the number of people left in limbo in accommodation centres is reduced.<sup>73</sup>

The key mechanism for enabling an expedited process is a strengthening of capacity in both the International Protection Office and the International Protection Appeals Tribunal, as well as the Legal Aid Board, with a move to an online form and use of regional locations, rather than a centralised and lengthy paper-based application system.<sup>74</sup>

These recommendations are welcome, and the task is now for the Government to progress this over 2021. Given the current concerning reliance on the use of emergency accommodation, it is vital that the recommended expedited decision-making process can progress, even in the challenging context of Covid-19. Further detail is needed on how Government will ensure that decisions and appeals are considered in the specified timeframe and what, if any, redress will be available for asylum-seekers whose cases have not

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69 Hari Gupta, Spotlight: Direct Provision (Houses of the Oireachtas Library and Research Services 2020) 34.

70 Irish Refugee Council, *Powerless: Experiences of Direct Provision during the Covid-19 Pandemic*, (IRC 2020) 9.

71 *ibid.*

72 Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (DoJ 2020) 10.

73 *ibid.*

74 *ibid.* 49.

been reviewed within the initial six-month window.

In progressing this commitment, additional consideration should also be given to the particular needs of children in the asylum process in line with the best interests principle. While the McMahon Report specifically examined the needs of children and vulnerable groups during the status determination process,<sup>75</sup> the Day Report does not make any specific recommendations for children such as fast-tracking of applications, or specialist training for decision-makers and legal representatives. Consideration should be given to this area as the Government progresses the White Paper and changes to the international protection decision-making process.

## ► **What children need next**

### **Publish the White Paper**

The Programme for Government committed to publish the White Paper by the end of 2020. It will outline how the Government will move to a new International Protection accommodation policy informed by the recommendations of the Expert Group.

The Department of Children, Equality, Diversity, Inclusion and Youth held a consultation with key stakeholders in November 2020 to inform the development and scope of the White Paper. The White Paper is due to be finalised and published in February 2021.<sup>76</sup>

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75 Department of Justice, *Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* (DoJ 2015) para 3.138.

76 Communication received by the Children's Rights Alliance from the Department of Children, Equality, Disability, Integration and Youth, 18 January 2021.

## ➔ **Recommendations:**

- ▶ Ensure that all asylum-seeking children and their families have access to own-door, child-friendly accommodation which upholds their right to an adequate standard of living while awaiting status determination.
- ▶ Provide a date for the commencement of inspection of accommodation centres and for inspections to occur on a cyclical basis to ensure that centres meet the standards laid down in the 2019 *National Standards*. Also provide a clear framework for escalation and response in instances where centres fail to meet these.
- ▶ Provide for comprehensive vulnerability assessments in an ongoing manner, in line with legal obligations, and ensure assessment is accompanied by appropriate therapeutic support where required.
- ▶ Develop training and support for schools to enable them to support asylum-seeking children's experience and attainment at school and ensure that all children and their families can access comprehensive induction material outlining their education rights and information about the school system in Ireland.
- ▶ In line with recommendations in the Day Report, strengthen capacity in both the International Protection Office and the International Protection Appeals Tribunal, as well as the Legal Aid Board, to ensure that all first decisions on international protection applications can be reached within six months.

# Children in Direct Provision

## Case Study



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Lule\* and her husband were living in overcrowded conditions in a mobile home with their four children, aged seven, four, three and six months. They lived here for a period of five and a half years. The mobile home was provided under the Direct Provision system, which is Ireland's reception system for asylum-seekers.

The reality for Lule and her family was far from the home they envisioned. Lule and her husband shared a room with their six-month-old baby, who slept in a cot. Their seven-year-old daughter slept on their floor with cushions. Their two young sons (three and four years old) shared the other small room.

The overcrowded space became even more of a challenge during the Covid-19 pandemic. The pandemic created significant difficulties for the family in carrying out home schooling as there was no space for different lessons or for homework. Lule made numerous requests to the Department of Justice for a transfer, but they were refused. She contacted the Irish Refugee Council's Independent Law Centre who requested a transfer on the family's behalf, and after a lot of advocacy, the request was ultimately granted and Lule and her family moved in September last year.

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*\* Names and some identifying details have been changed to protect the privacy of the individual and families involved at the heart of this story.*

**13**

# Pathways for Undocumented Children

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Section Grade:

**D**



## The Programme for Government commits to:

Create new pathways for long-term undocumented people and their dependents meeting specified criteria to regularise their status within 18 months of the formation of the Government, bearing in mind European Union and Common Travel Area commitments.

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▶ Progress: **Slow**

**'Pathways for Undocumented Children' receives a D grade. The Department of Justice is currently drafting a policy paper on the regularisation of undocumented migrants and progress is dependent on this.**



## Ireland's duties and responsibilities in international law



Every child has the right to equal treatment irrespective of the status of their parents or guardian.<sup>1</sup> As part of its commitments when signing up to the UN Convention on the Rights of the Child (UNCRC), Ireland agreed to be reviewed every five on its progress in implementing the rights in the Convention. Ireland was last examined by the Committee on the Rights of the Child in 2016. The Committee expressed concern that there were no clear and accessible formal procedures for conferring immigration status on children in irregular migration situations. It also expressed concern that there are inadequate measures to ensure that children with an irregular migration status who are in care receive independent legal advice, frequently resulting in such children not receiving timely clarification on their migration status.<sup>2</sup>

The Committee emphasised that all children are entitled to the full protection and implementation of their rights under the Convention and it urged the State to ensure that the rights enshrined in the Convention are guaranteed for all children regardless of their migration status or that of their parents, and to address all violations of those rights.

In particular, the Committee urged Ireland to:

- ▶ Expediently adopt a comprehensive legal framework that is in accordance with international human rights standards to address the needs of migrant children;
- ▶ Ensure that the legal framework includes clear and accessible formal procedures for conferring immigration status on children and their families who are in irregular migration situations; and
- ▶ Take measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status.<sup>3</sup>

1 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989), Art 2.

2 UNCRC 'Concluding observations on the combined third and fourth periodic reports of Ireland' 29 January 2016 UN Doc CRC/C/IRL/CO/3-4 para 67.

3 *ibid* para 68.

## ► What's the context for this commitment?

There are an estimated 15,000 to 17,000 undocumented people living in the State including 2,000 to 3,000 children. In 2019, the Migrant Rights Centre of Ireland (MRCI) carried out a survey of 108 parents of undocumented children in Ireland which found that sixty-eight per cent of undocumented children had been born in Ireland. Of those children born outside Ireland, seventy-eight per cent had been living here for five years or more.

The Platform for International Cooperation on Undocumented Migrants highlighted that uncertain, precarious or irregular status has negative impacts on the health and well-being of children and young people.<sup>4</sup> They are at risk of being deported.<sup>5</sup> Their access to further education, training, employment and vital services is restricted.<sup>6</sup> It limits their ability to plan for the future and develop.<sup>7</sup> Clear status determination procedures that provide children and young people with a secure and long-term residence status are crucial to ensure they enjoy all of their rights fully.



### This is My Life: A Story of Growing up Undocumented in Ireland

Made by a group of young undocumented Dubliners, this short film shows how being undocumented affects every part of your life – home, work, school and more.

► <https://bit.ly/3iRwJFH>

Film by Migrant Rights Centre Ireland and funded by What Works. What Works, funded under Dormant Accounts, is an initiative designed by the Department of Children and Youth Affairs, which aims to maximise the impact of prevention and early intervention to improve outcomes for children and young people living in Ireland. At the core of the initiative is a desire to foster persistent curiosity amongst those working to improve the lives of children and young people.

4 Platform for International Cooperation on Undocumented Migrants, 'Manual on regularisations for children, young people and families', (PICUM 2018) 6.

5 *ibid.*

6 *ibid.*

7 *ibid.*

In December 2018, nations of the world, including Ireland, adopted the UN Global Compact for Safe, Orderly and Regular Migration, the first global agreement on a common approach to international migration.<sup>8</sup> It recognises the need for a cooperative approach to optimise the benefits of migration, alongside addressing the risks and challenges of migration for individuals, communities and states.<sup>9</sup>

A referendum held in 2004 removed the automatic right to citizenship for all children born in Ireland.<sup>10</sup> Commenting at the time of the referendum, the Irish Human Rights Commission expressed concern that the proposed constitutional amendment had not undergone comprehensive consideration of the human rights consequences.<sup>11</sup>

Undocumented children are being denied the opportunities to plan for the future: to access further education; to travel outside Ireland to see family or for educational opportunities; and the ability to obtain secure employment upon completing school. These children are missing key milestones while watching their peers, with whom they are likely to have spent years at school, living 'normal lives' and progressing to an adulthood which will not be stunted or diminished by immigration status.<sup>12</sup>

## ► **What's been achieved for children so far?**

The Programme for Government committed to creating a pathway to regularisation for the undocumented and their dependents.<sup>13</sup> The Department of Justice is drafting a policy paper, which will include an assessment of international best practices in relation to the regularisation of undocumented migrants in other EU jurisdictions and, according to the Department, it will

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8 United Nations, *Global Compact for Migration* (UN 2018).

9 United Nations, *Global Compact for Migration* (UN 2018) 2.

10 Referendum on the Twenty-Seventh Amendment of the Constitution 2004 (Irish Citizenship).

11 Irish Human Rights Commission, *Observations on the Proposed Referendum on Citizenship* (IHRC 2004) 13.

12 RTE News, 'Migrant group calls for rights for undocumented children', 3 July 2019 <<https://bit.ly/3cegEIQ>> accessed 10 December 2020.

13 Government of Ireland, *Programme for Government, Our Shared Future* (2020) 76.

need to have detailed engagement with key stakeholders and require legal advice from the Attorney General's Office.<sup>14</sup> The Minister for Justice intends to consult with relevant Government Departments, civil society and other interested parties, before finalising the Scheme, which is expected to be launched in the second half of 2021.<sup>15</sup>

The Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018 was initiated in the Seanad in 2018. The Bill contains two substantive elements. Under the Bill, children born in Ireland would not need to satisfy the usual residency conditions to apply for citizenship by way of naturalisation. The Bill proposes that a child would have to have lived in Ireland for a period of two years immediately preceding their application for citizenship<sup>16</sup> instead of the usual four years, and the child would not need to satisfy the usual requirement that the residence is lawful.<sup>17</sup> The Labour Party, rather than the Government, has proposed the Bill but the Minister for Justice has indicated that she is amenable to talks in relation to the Bill.<sup>18</sup> The introduction of the Bill is a welcome step towards the protection of undocumented children in Ireland. Consideration should be given to amending the 'good character' assessment in respect of a child. The High Court decision in *Iurescu (a minor) v Minister for Justice and Equality* clarified that the Minister for Justice was not entitled to take account of a parent or guardian's character when determining whether a child is entitled to citizenship by naturalisation.<sup>19</sup>

A further Bill was initiated in the Dáil by Irish Solidarity–People Before Profit in September 2020, the Irish Nationality and Citizenship (Citizenship for Children) Bill 2020. It has two aims: to restore automatic citizenship for all children born on the island of Ireland; and to provide citizenship for children residing here for three years or more.<sup>20</sup> That Bill is in the second stage of the legislative

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14 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

15 Communication received by the Children's Rights Alliance from the Department of Justice, 18 January 2021.

16 Irish Nationality and Citizenship (Naturalisation Of Minors Born In Ireland) Bill 2018, s2(1).

17 See generally Sarah Groarke and Róisín Dunbar, 'ESRI Research Series Number 116: Pathways to citizenship through naturalisation in Ireland', (ESRI 2020).

18 Marie O'Halloran, 'Government to work with Labour on citizenship Bill for stateless children', *The Irish Times*, 2 December 2020.

19 *Iurescu (a minor) v Minister for Justice and Equality* [2019] IEHC 535.

20 Irish Nationality and Citizenship (Citizenship for Children) Bill 2020.

process. It should be noted that a similar bill was defeated by a Dáil vote in 2017.<sup>21</sup>

The Employment Permits (Amendment) Act 2014 allows for children under the age of 16 to register with the Garda National Immigration Bureau.<sup>22</sup> That section has yet to commence. Registration is important so that children's time spent in the State can be calculated towards their reckonable residency for the purposes of immigration applications. If any proposed scheme is going to require a child to have been living in Ireland for a certain period, it is essential that children have a means of registering their residency. Otherwise, children risk becoming undocumented when they reach the age of majority. In its 2017-2020 *Migrant Integration Strategy*, the Government committed to introducing registration for minors in 2022.<sup>23</sup>

## ► **What children need next**

The Committee on the Rights of the Child made recommendations in respect of the regularisation of undocumented children in 2016.<sup>24</sup> While it is welcome that the Department of Justice has started to draft a policy paper, progress on the Committee's recommendations has been extremely slow. Each year, more and more undocumented children are missing milestones such as attending college, obtaining secure employment, travelling outside Ireland, as well as the fundamental sense of security and belonging. This is time that undocumented children simply cannot afford to lose.

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21 Irish Nationality and Citizenship (Restoration of Birthright Citizenship) Bill 2017.

22 The Employment Permits (Amendment) Act 2014, s35(b).

23 Department of Justice, *Migrant Integration Strategy 2017-2020*, (DOJ 2017).

24 UNCRC 'Concluding observations on the combined third and fourth periodic reports of Ireland' 29 January 2016 UN Doc CRC/C/IRL/CO/3-4 para 68.

## ➔ **Recommendations**

- ▶ Finalise and publish the policy paper on the regularisation of undocumented migrants.
- ▶ Launch a scheme to create new pathways for long-term undocumented people and their children as a matter of urgency.
- ▶ Bring forward the necessary legislation to create new pathways for long-term undocumented people and their children.

# Pathways for Undocumented Children

## Case Study



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The current system in place for undocumented families leaves many in limbo. There are an estimated 3,000 children living undocumented in Ireland today, that is people without a residency status.

Without a pathway in place for them to come forward safely to seek legal status (a process called regularisation), many families stay hidden, living every day in fear. Children lie about their CAO course choices knowing they cannot continue their education to third level. Parents struggle without any access to social welfare benefits.

Our members, the Migrant Rights Centre Ireland, work with undocumented families and see the untold damage that comes with not having the means to apply for legal status.

One family spent more than 11 years undocumented in Ireland. Anita\*, who is living in Ireland with her 3 children under 12, shared how this experience affected her.

*"[I]t's a very hard job to be a mother while keeping all the time smile on your face and pretending everything is fine to your kids no matter how much broken you are from inside, there are so many questions they started to ask .... our life is full of fear I don't know how long I would hold myself[,] I can't bear this stress and so many thoughts[,] I can't stop my tears and I am afraid if something happened to me what will happen to my kids."*

The Government committed to creating a pathway for regularisation within the first 18 months of taking office. However, currently there is no safe way for undocumented families to apply for a legal residency status.

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\* Names and some identifying details have been changed to protect the privacy of the individual and families involved at the heart of this story.

**14**

**Harassment,  
Harmful  
Communications  
and Related  
Offences Bill**

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**Section Grade:**

**B**





## The Programme for Government commits to:

Enact the Harassment and Harmful Communications Bill (as amended) in order to outlaw image based sexual abuse and to prevent abusive sharing of intimate images online.

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▶ Progress: **Good**

Progress on the Harassment, Harmful Communications and Related Offences Bill receives a B grade. This is due to the passing of the Bill into law in December 2020. However, the Act has yet to be commenced.

## Ireland's duties and responsibilities in international law



All children have the right to be protected from abuse, neglect and sexual exploitation.<sup>1</sup>

The UN Committee on the Rights of the Child has noted that 'the opportunities and the risks of harm for children are likely to increase, even where children do not actively access the internet, as societies progressively rely upon digital technologies for their functioning'.<sup>2</sup> The Committee has also recommended States should regularly update legal frameworks to protect children from 'emerging risks of violence, including psychological harm, in the digital environment'.<sup>3</sup> The Committee also noted that some of the risks in the digital environment come from children themselves such as 'cyberbullying, harassment, violence, and sharing of sexualized images of children ("sexting")' and that in responding to this recommendation States take 'preventive, safeguarding and restorative justice approaches whenever possible'.<sup>4</sup>

In its Report of the 2014 General Day of Discussion, Digital Media and Children's Rights, the Committee recommended that States take a holistic approach to address the risks posed by digital media and Information and Communication Technology (ICT) in respect of the safety of children, including online harassment, sexual exploitation of children, access to violent and sexual content, grooming and self-generated sexual content.<sup>5</sup> The Committee has also highlighted the obligation on States to 'develop effective safeguards against abuse without unduly restricting the full enjoyment of their rights'.<sup>6</sup>

Ireland committed to promote, protect and respect children's rights when it ratified the United Nations Convention on the Rights of the

1 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

2 UN Committee on the Rights of the Child, Draft General comment No. 25 (2020) on Children's rights in relation to the digital environment CRC/C/GC/25, para 4.

3 *ibid* para 82.

4 *ibid* para 85.

5 UNCRC 'Report of the 2014 General Day of Discussion, Digital Media and Children's Rights' (OHCHR 2014) para 105.

6 *ibid* para 102.

Child (UNCRC) in 1992. As part of this commitment, Ireland agreed to be reviewed every five years on its progress in implementing the rights in the Convention. Ireland was last examined by the Committee in 2016. At that time, the Committee recommended that the State ratify the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution.<sup>7</sup> Ireland signed the Optional Protocol on 7 September 2000 but has yet to ratify it and is now the only European Union (EU) Member State not to have ratified the Protocol.<sup>8</sup>

## ► **What's the context for this commitment?**

The internet has revolutionised the modern world and in turn, the lives of children worldwide; the reality is that they make up one third of global online users.<sup>9</sup> While it brings unparalleled opportunity for children to learn, create, connect and socialise it also brings unparalleled risk, including the loss of personal data, exposure to harmful content, cyberbullying, negative impacts on health, wellbeing, online grooming and extortion. In Ireland, ninety-three per cent of children aged eight to twelve years own their own smart device and sixty-five per cent have their own social media account.<sup>10</sup> Most children and young people accessing the digital world have enjoyable and positive experiences. They use the online world to maintain friendships and relationships, have fun, support their education and learn about their world.

The Council of Europe notes that there are a number of areas of concern for children's healthy development and wellbeing which may arise in connection with the digital environment, including, risks of harm from sexual exploitation and abuse, and online grooming.<sup>11</sup> It recommends that any protective measures should take into consideration the best interests and evolving capacities of the child and not unduly restrict the exercise of other rights. Irish

7 UN Committee on the Rights of the Child (2016) Concluding Observations Ireland, CRC/C/IRL/CO/3-4, para 77.

8 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography A/RES/54/263 of 25 May 2000.

9 Unicef (2017) 'Children in the Digital World', <<https://uni.cf/3cbGMnH>> accessed 27 November 2020.

10 Cybersafelreland, *Annual Report 2019*, (CyberSafelreland 2020) 23.

11 Cybersafelreland, *Annual Report 2019*, (CyberSafelreland 2020) 19

teenagers are the fourth highest users in the EU for sexting.<sup>12</sup> The growing use of technology amongst peers must be recognised in any reforms, with legal progress matched in school-based relationships and sex education that emphasises the importance of mutual respect and active consent.

The production and distribution of child sexual abuse and exploitation materials – whether in print, online, or live-streamed – represent a fundamental violation of children's rights.<sup>13</sup> These images effectively represent a crime scene and people accessing these images directly contribute to the exploitation of child victims. Furthermore, they create demand and perpetuate the trauma of the child as the abuse is ongoing until the image is removed. There has been an explosion of new cases from 116 in 2016 to 392 in 2018.<sup>14</sup> However, cases involving distribution of child abuse material are taking up to 10 years for the State to complete, with the problem deteriorating in the last year, as technological and data issues impede prosecutions.<sup>15</sup> These delays are caused by a number of factors including the number of devices which need to be seized and a lack of Garda capacity to deal with devices with sophisticated encryption.<sup>16</sup> Delays are reported at every stage in the process including taking victim statements, arresting or interviewing suspects and sending the file to the Office of the Director of Public Prosecutions (DPP).<sup>17</sup>

The *2017 Annual Report of the Committee Appointed to Monitor the Effectiveness of the Youth Diversion Programme* noted that of the 59 referrals to the Garda Youth Diversion Programme for possession of images of child abuse, nine incidents involved the consensual sharing of images by peers on phones or social media and 20 referrals related to initial consensual sharing of images with one party then forwarding the images to third parties, without consent.<sup>18</sup> The report highlighted that the increase in these referrals and the

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12 Dublin City University, Irish Teens the Fourth Highest in the EU for Sexting <<https://bit.ly/3qTC2HK>> accessed 11 December 2020.

13 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

14 Conor Gallagher, 'Delays to child porn inquiries put abused at further risk', *The Irish Times*, 7 January 2020.

15 *ibid.*

16 Conor Gallagher, 'Backlogs a dangerous flaw in child porn and abuse inquiries Resource and Data leave perpetrator at large – and child vulnerable to further abuse' *The Irish Times*, 7 January 2020.

17 Garda Síochána Inspectorate, *Responding to Child Sexual Abuse, A Follow Up Review from the Garda Inspectorate* (Garda Inspectorate, December 2017) 10-11.

18 Garda Youth Diversion and Crime Prevention Bureau, *2017 Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme* (2018) 18.



**The internet has revolutionised the modern world and in turn, the lives of children worldwide; the reality is that they make up one third of global online users.**

circumstances surrounding them, demonstrated a need for modernised legislation to be enacted which addresses this specific behaviour rather than children being referred for the offence of possession or distribution of child sexual abuse imagery or videos. The Committee also spoke of the need to educate children about online rights and safety to increase awareness that the sharing of images of themselves or their peers who are under 18 years of age is a criminal offence under current legislation.<sup>19</sup>

In 2016, the Law Reform Commission (LRC) published its report entitled *Harmful Communications and Digital Safety*.<sup>20</sup> The report noted that there were gaps in criminal law regarding harmful communication, in particular online. The report contained a draft Harmful Communications and Digital Safety Bill, which proposed the consolidation and reform of criminal law on harmful communications and highlighted that 'the views of young people on the issues covered by this project need to be considered, because they are one of the groups most affected by harmful digital communications'.<sup>21</sup> The proposed Bill introduced new offences to deal with sending, distributing or publishing intimate images without consent. In relation to the imposition of criminal law sanctions, the LRC recommended that a hierarchical approach be adopted, which, the report states, was necessary because this type of harmful communication often involves children and young people for whom the criminal justice process should be seen as a last resort.<sup>22</sup>

## ► **What's been achieved for children so far?**

The Programme for Government committed to enact the Harassment & Harmful Communications Bill to outlaw image-based sexual abuse and to prevent abusive sharing of intimate images online.<sup>23</sup> This bill was first introduced in the Dáil in 2017 and following debate and amendment was

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19 *ibid.*

20 Law Reform Commission, *'Report on harmful communications and digital safety'*, (LRC 116 - 2016).

21 *ibid* para 10.

22 *ibid* para 19.

23 Government of Ireland, *Programme for Government, Our Shared Future* (2020) 84.

signed into law in December 2020.<sup>24</sup> The Act introduces new offences concerned with the recording and distributing of intimate images without consent<sup>25</sup> and the publishing or sending of threatening messages or grossly offensive communication.<sup>26</sup> The Act does not define how the term 'grossly offensive communication' is to be interpreted. Intimate images are defined in the Act as including pictures, videos or digital representation (including any accompanying sound or document) of what is or what purports to be a person's 'genitals, buttocks or anal region' and breasts, underwear, any nudity or in which a person is engaged<sup>27</sup>

Importantly the Act provides that the consent of the DPP must be obtained before a person under the age of 17 can be charged with an offence.<sup>28</sup> This reflects the LRC's recommendation that criminal justice proceedings should be invoked only after other responses, such as education or suitable diversion programmes, have been provided and as a last resort.<sup>29</sup> Children who display harmful sexual behaviours are more likely to have histories of maltreatment,<sup>30</sup> and so, it is important that other responses are considered including child protection and welfare, particularly in cases where younger children are viewing and sharing the images. Education is key in ensuring that children are aware of the harm caused by non-consensual sharing as well as protected from the consequences of their own, or a peer's, harmful actions. Every child has the right to be protected against the distribution of images of a sexual or intimate nature.<sup>31</sup> It is regrettable that all children under 18 charged with an offence under the Act are not encompassed under this provision. The Act

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24 President of Ireland, President Higgins signs Harassment, Harmful Communications and Related Offences Bill 2017 <<https://bit.ly/3pxcboN>> accessed 20 January 2021.

25 Harassment, Harmful Communications and Related Offences Bill 2017, s2 and 3. Section 2 of the Bill makes it an offence to distribute, publish (or threaten to do so) intimate images without the consent of the person where they intend on causing harm which is defined as interfering with the other person's peace and privacy or cause alarm or distress. Section 3 creates an offence of recording distributing or publishing intimate images without consent.

26 Harassment, Harmful Communications and Related Offences Bill 2017, s4. Section 4 prohibits the distributing, publishing or sending of threatening or grossly offensive communication which is intended to 'seriously interfere with the other person's peace and privacy or causes alarm or distress to the other person'.

27 *ibid* s1.

28 *ibid* s8.

29 Law Reform Commission, *Report on harmful communications and digital safety*, (LRC 116 - 2016) 7.

30 Simon Hackett, 'Children and young people with harmful sexual behaviour', *Research in Practice* <<https://bit.ly/3qQme8u>> accessed 11 December 2020.

31 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

does not include provision for application to the Court for a civil restraint order to prevent someone from engaging in harassing behaviour as was initially provided for in the first iteration of the Bill.<sup>32</sup> Consideration should be given in future law reform to how these protections can be introduced.

## ► **What children need next**

It is welcome that the Bill was enacted in 2020 but it is important that the Act is commenced as a matter of priority in order for the provisions to be enforceable.

A single image uploaded to the internet without consent or shared to third parties can cause devastating consequences for a child. The Gardaí must be properly equipped to enforce the proposed legislation including having the appropriate digital equipment to obtain and retain the evidence necessary to bring prosecutions under the proposed legislation where the perpetrator of the offence is aged over 18.

The UN Committee on the Rights of the Child recommends that States should take a holistic approach to address the risks posed by digital media.<sup>33</sup> While this legislation marks an important step forward it is a reactive measure and more must be done to prevent child sexual abuse occurring in the first instance. The Government has committed to 'develop inclusive and age-appropriate RSE<sup>34</sup> and SPHE<sup>35</sup> curricula across primary and post-primary levels, including an inclusive programme on LGBTI+ relationships'.<sup>36</sup> It is vital that this commitment is prioritised, and work undertaken to ensure that all young people receive the vital knowledge and skills that can support them to navigate the world around them. Education programmes which are embedded in a whole-school approach, and supported by parent and carer engagement at home, are a significant component of a public health

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32 Harassment, Harmful Communications and Related Offences Bill 2017 (as initiated) s13.

33 UNCRC 'Report of the 2014 General Day of Discussion, Digital Media and Children's Rights' (OHCHR 2014) para 105.

34 Relationships and Sexuality Education.

35 Social, Personal and Health Education.

36 Government of Ireland, *Programme for Government, Our Shared Future* (2020) 95.



approach to child sexual abuse prevention.<sup>37</sup> There is good evidence that school-based education programmes help children to recognise what constitutes abuse or inappropriate behaviour, and increase the likelihood that children are able to disclose experience of abuse.<sup>38</sup> A modern curriculum will support children from a young age to recognise the concept of personal boundaries and inappropriate touch or contact. Drawing on research from England which found that a third of all child sexual abuse is perpetrated by a peer,<sup>39</sup> it is vital that in line with age and developmental stage, learning introduces the principle of consent and how it applies in digital spaces, as well as in our physical interactions. RSE can also support children to understand what actions might amount to a criminal offence under the law, and the effects such behaviour might have on the victim. This education is central for ensuring that children understand their rights to be treated with dignity and respect and their responsibility to treat peers in this way too.

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37 Jon Brown and Aliya Saied-Tessier, *Preventing Child Sexual Abuse: Towards a national strategy for England 2015* <<https://bit.ly/2LYU6kW>> accessed 20 January 2021.

38 K Walsh et al, 'School-based programmes for the prevention of child sexual abuse', *Cochrane Review*, 16 April 2015 <<https://bit.ly/3pwUMw4>> accessed 20 January 2021.

39 Simon Hackett, 'Children and young people with harmful sexual behaviours: Research Review' (2014) *Research in Practice* <<https://bit.ly/3ojZDj0>> accessed 20 January 2021 59.

## **Recommendations**

- ▶ Commence the Harassment, Harmful Communications and Related Offences Act 2020 as a matter of priority.
- ▶ Engage in a widespread public information campaign to make the provisions of the new legislation widely known by the general public.
- ▶ Ensure information on online communications is included as part of updated RSE and SPHE curricula so all children and young people are equipped to recognise abuse or harmful behaviour in different contexts, and understand that key concepts, such as consent, apply to both the digital sphere and face-to-face interaction.
- ▶ Resource the Gardaí to effectively implement the provisions of the legislation.

# Harassment, Harmful Communications and Related Offences Bill



## Case Study

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Triona\* called the Dublin Rape Crisis Centre because she didn't know what else to do.

Triona had found out that her 16-year-old daughter Ruby had been sending nude photos of herself to a boy she liked. Ruby said that everyone did it and didn't view it as a big deal. Most of the images were being shared on Snapchat, a multimedia messaging platform, and Ruby argued that it was okay to do this because the app deletes the images once they've been viewed. Triona couldn't seem to get Ruby to understand that someone she barely knew had pictures of her and could very easily show someone else. And then came the bombshell. Ruby found out from others that her pictures had been shared.

Triona reached out to the Dublin Rape Crisis Centre for help. The team reassured Triona that Ruby was not at fault and that the boy betrayed her daughter's trust by sharing her images without consent. They were also able to give Triona information for organisations like the CyberSafeKids, Jigsaw, SpunOut.ie, that could help her discuss with Ruby the laws around holding and sharing images of this nature, her own rights in the digital space and actions she could take to keep herself safe online and reminded her that the Dublin Rape Crisis Centre were there to support her and her daughter if they needed to call again.

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*\* Names and some identifying details have been changed to protect the privacy of the individual and families involved at the heart of this story.*



# Harassment, Harmful Communications and Related Offences Bill



## Case Study

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Mary\*, aged 14, was referred to the ISPCC from Tusla, the Child and Family Agency. Mary had been in care for five years and was reunified with her Mum, Linda\* in the first week of the government COVID-19 restrictions.

Mary struggled to maintain friendships. She has autism and while she is 14 years old, she functions at an emotional age of about nine. Tusla asked the ISPCC to support Mary on issues around online safety and sexual consent. Linda told the ISPCC she found Mary involved in a live-stream broadcast with an older male who was masturbating. Linda wanted to do the right thing and called An Garda Síochána to raise her concerns and to discuss removing Mary's internet access to protect her.

The ISPCC supported Linda in her approach to allow access to gaming consoles with regular check-ins and also commended and encouraged Linda's practice of having regular conversations with Mary around online safety and how she (Mary) could enjoy the internet in her daily life while keeping herself safe.

A family welfare conference – a special meeting between a family and other services to agree how best to support a child – was convened and extra supports were brought in. Mary was struggling with her own identity and her emotions. Linda was concerned that Mary was particularly vulnerable to sexual grooming and/or trafficking because of this. Linda also discovered that Mary had given her personal details to a criminal gang who were trying to exploit women and girls.

ISPCC supported Linda in removing internet access temporarily as Mary had little awareness of the potential dangers involved.

While the Sexual Offences Act (2017) is already in place and covers many of the issues here, a new piece of legislation called the Harassment and Harmful Communications Act, when it comes into effect, could offer justice to Mary should she have been exploited. This is because her self-generated images were shared without consent and this would be deemed a crime under the new Act.

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*\* Names and some identifying details have been changed to protect the privacy of the individual and families involved at the heart of this story.*

**IS<sup>P</sup>CC**  
**Childline**

**15**

# **Child Safety Online**

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**Section Grade:**

**D-**



## **The Programme for Government commits to:**

**Enact the Online Safety and Media Regulation Bill and establish an Online Safety Commissioner.**

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▶ **Progress: Some**

**'Child Safety Online' receives a D- grade. While the Government published the finalised General Scheme of the Online Safety and Media Regulation Bill in December 2020, the Scheme does not specifically provide for the establishment of the Online Safety Commissioner, rather it empowers the proposed Media Commission to delegate functions to individual commissioners. Furthermore, the General Scheme does not provide for an individual complaints mechanism for children and young people if their rights are not respected online in breach of children's right to an effective remedy.<sup>1</sup>**

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<sup>1</sup> European Convention of Human Rights Arts 6 and 19.

## Ireland's duties and responsibilities in international law



All children have the right to be protected from abuse, neglect and sexual exploitation.<sup>2</sup> In the UN Committee on the Rights of the Child's 'Report of the 2014 General Day of Discussion, Digital Media and Children's Rights', it recommended that a holistic approach be taken to address the risks posed by digital media and Information and Communication Technologies (ICT) in respect of the safety of children, including online harassment, sexual exploitation of children, access to violent and sexual content, grooming and self-generated sexual content.<sup>3</sup> The Committee has also highlighted States' obligation to 'develop effective safeguards against abuse without unduly restricting the full enjoyment of their rights'.<sup>4</sup>

The UN Committee on the Rights of the Child has noted that 'the opportunities and the risks of harm for children are likely to increase, even where children do not actively access the internet, as societies progressively rely upon digital technologies for their functioning'.<sup>5</sup> The Committee also in its draft General Comment has recommended that States should regularly update legal frameworks to protect children from 'emerging risks of violence, including psychological harm, in the digital environment'.<sup>6</sup> The Committee noted that some of the risks in the digital environment come from children themselves such as 'cyberbullying, harassment, violence, and sharing of sexualized images of children ("sexting")' and that in responding to this, recommended States take 'preventive, safeguarding and restorative justice approaches whenever possible'.<sup>7</sup>

2 UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Arts 19 and 34.

3 UNCRC 'Report of the 2014 General Day of Discussion, Digital Media and Children's Rights' (OHCHR, 2014) at para 105.

4 *ibid* para 102.

5 UN Committee on the Rights of the Child, Draft General comment No. 25 (2020) on Children's rights in relation to the digital environment CRC/C/GC/25, para 4.

6 *ibid* para 82.

7 *ibid* para 85.



In 2018, the Council of Europe published its Recommendation, Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment which recommends that States require businesses to meet their responsibilities by requiring them to implement measures and 'encourage them to co-operate' with the State and other stakeholders, including children.<sup>8</sup> It further recommends Member States should ensure that a child's right to an effective remedy under the European Convention of Human Rights<sup>9</sup> is respected and protected when their rights have been infringed online.<sup>10</sup> Guidance is given on what constitutes an effective remedy and it includes inquiry, explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation.<sup>11</sup> Importantly it provides that process should be speedy, child-friendly and provide the appropriate redress.<sup>12</sup>

## ► What's the context for this commitment?

Children make up one third of global online users.<sup>13</sup> While the online world brings unparalleled opportunity to children to learn, create, connect and socialise it also brings unparalleled risk, including the loss of personal data, exposure to harmful content, cyberbullying, negative impacts on health and well-being, online grooming and extortion. Research commissioned by the Irish Society for the Prevention of Cruelty to Children (ISPCC) found that 73 per cent of parents did not think the Government was doing enough to keep children safe online and 78 per cent felt that the industry was not doing enough.<sup>14</sup> Self-regulation of the industry can result in inconsistent

8 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 11.

9 European Convention of Human Rights Art 6 and 19.

10 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24.

11 *ibid.*

12 *ibid.*

13 Unicef 'Children in the Digital World' (2017) <[https://www.unicef.org/publications/files/SOWC\\_2017\\_ENG\\_WEB.pdf](https://www.unicef.org/publications/files/SOWC_2017_ENG_WEB.pdf)> accessed 27 November 2020.

14 Karen Hand (ISPCC 2018) unpublished.

standards being applied and data from CyberSafeKids reveals that there are high numbers of children under the age of 13 on social media platforms despite current minimum age restrictions.<sup>15</sup> While undoubtedly, the internet has significant positive impacts both for children and wider society, for too long legislation and policy have not kept pace with the evolution of the online world. This has left children at risk and unprepared to appropriately navigate online platforms.

In 2018, the Council of Europe published its Recommendation, *Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment* and noted that the online world is reshaping children's lives in many ways resulting in 'opportunities for and risks to their well-being and enjoyment of human rights'.<sup>16</sup> Recognising that business and enterprises have a responsibility to respect children's rights,<sup>17</sup> the Council of Europe recommends that States require businesses to meet their responsibilities by requiring them to implement measures and 'encourage them to co-operate' with the State and other stakeholders, including children.<sup>18</sup> A key proposal of these Guidelines is that, in relation to the processing of children's personal data, States should require relevant stakeholders to implement safety by design, privacy by design and privacy by default measures, taking into account the best interests of the child.<sup>19</sup> Legislating to incorporate these principles would help ensure that, from the planning stages of technology development onward, children are protected. The Council of Europe recommends Member States should ensure that a child's right to an effective remedy under the European Convention of Human Rights<sup>20</sup> is respected and protected when their rights

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15 CyberSafelreland, *Annual Report 2019*, (2020) 23.

16 Council of Europe, '*Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment*' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 10.

17 UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights CRC/C/GC/16.

18 Council of Europe, '*Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment*' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 11.

19 Council of Europe, '*Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment*' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 23.

20 European Convention of Human Rights Art 6 and 19.

have been infringed online.<sup>21</sup> This means that States are required to make provision for 'known, accessible, affordable, and child-friendly avenues through which children, as well as their parents or legal representatives, may submit complaints and seek remedies'. Guidance is given on what constitutes an effective remedy and it includes inquiry, explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation.<sup>22</sup> Importantly, it provides that process should be speedy, child-friendly and provide the appropriate redress.<sup>23</sup>

The Law Reform Commission (LRC) has recommended establishing a statutory Digital Safety Commissioner, modelled on comparable offices in Australia and New Zealand.<sup>24</sup> The LRC also envisioned that this office would have a role in promoting digital safety and positive digital citizenship among children and young people. Building on the current non-statutory take-down procedures and standards in the online sector, the Digital Safety Commissioner would have responsibility for publishing a Code of Practice on Digital Safety which would include an efficient take-down procedure.<sup>25</sup> If a social media site did not comply with the standards in the Code of Practice, an individual could then appeal to the Digital Safety Commissioner, who could direct a social media site to comply with the standards in the Code.<sup>26</sup> The LRC also recommended that if a social media site did not comply with the Digital Safety Commissioner's direction, the Commissioner could apply to the Circuit Court for a court order requiring compliance.<sup>27</sup>

## ► **What's been achieved for children so far?**

The Programme for Government commits to enact the Online Safety and Media Regulation Bill and establish an 'Online Safety Commissioner', that

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21 Council of Europe, *'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment'* (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24.

22 *ibid.*

23 *ibid.*

24 Law Reform Commission, *Report on Harmful Communications and Digital Safety* (LRC 116 - 2016) 144.

25 *ibid.*

26 *ibid.*

27 *ibid.*

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**While the online world  
brings unparalleled  
opportunity to  
children to learn,  
create, connect and  
socialise it also brings  
unparalleled risk...**

will carry out a number of functions including; requiring 'platforms to have takedown measures that are timely and effective', requiring services to operate effective complaints procedures, promoting digital citizenship among children and young people, requiring platforms to build safety into the design of their platforms and ensuring that new online safety codes can combat cyberbullying material and material promoting eating disorders, self-harm, and suicide.<sup>28</sup>

Following a commitment made in March 2019 by the then Minister for Communications, Climate Action and Environment, Richard Bruton TD and a public consultation, the General Scheme of the Online Safety and Media Communications Bill was published in January 2020.<sup>29</sup> Following the General Election and the subsequent change in Government, the finalised General Scheme was published in December 2020. The purpose of the Bill is to replace the Broadcasting Authority of Ireland with a Media Commission, transpose the revised European Union (EU) Audiovisual Media Services Directive into Irish law, establish a regulatory framework for online safety and update the rules for television broadcasting and video on-demand services.<sup>30</sup> One of the functions of the Commission is to promote 'educational initiatives and activities relating to online safety' and to advise any educational or training institution, Ministers, Departments of State or any public body.<sup>31</sup> However, the Scheme does not give the Commission the power to evaluate and regulate the educational and community awareness programmes on online safety in the same manner as the Australian scheme (E-Safety Commissioner) which has the power to both evaluate educational programmes and provides a list of trusted providers of online safety education.<sup>32</sup>

While one of the objectives of the Commission is to 'protect the interests of children taking into account the vulnerability of children to harmful content and undue commercial exploitation'<sup>33</sup> the Scheme of the Bill does not specify

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28 Government of Ireland, *Programme for Government: Our Shared Future*, 87.

29 General Scheme of the Online Safety & Media Regulation Bill.

30 Communication received by the Children's Rights Alliance from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 12 January 2021.

31 General Scheme of the Online Safety & Media Regulation Bill, Head 10 (xiv)

32 Australian Government, Australian E- Safety Commissioner, What we do, <<https://www.esafety.gov.au/about-us/what-we-do>> accessed 25 January 2021.

33 General Scheme of the Online Safety & Media Regulation Bill, Head 9(4).

that one member of the proposed Commission will be an Online Safety Commissioner. The Media Commission will be empowered to delegate functions to individual commissioners, and it is intended that one of the three initial commissioners will be delegated the functions relating to online safety.<sup>34</sup>

The Scheme of the Bill provides that the Commission will conduct public information campaigns for the purpose of educating and providing information to the public in relation to online safety and media literacy.<sup>35</sup> The Scheme does not follow the recommended approach of the LRC, or the existing models in Australia (E-Safety Commissioner) or New Zealand (Netsafe) in providing a mechanism for individuals to appeal to the Commissioner when a social media site fails to comply with the standards of the Code of Practice on Digital Safety. Instead, the Bill provides for a 'systematic complaints scheme'<sup>36</sup> or 'super complaints'<sup>37</sup> which is designed for nominated bodies, such as expert Non-Governmental Organisations (NGO), to bring systematic issues to the attention of the Commission, an example of which could be providers that have a vast number of complaints against them. This Bill provides for the Commission to have the power to audit the complaints handling system of a service provider<sup>38</sup> and direct them to take specified actions which can include changes to their systems or the take down or restoration of content.

## ► **What children need next**

The publication and continued momentum in progressing the General Scheme of the Online Safety Media Regulation Bill is welcome and is a step in the right direction for the protection of children online. There is currently no timeline for when drafting of the General Scheme will undergo pre-legislative

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34 Communication received by the Children's Rights Alliance from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 12 January 2021.

35 General Scheme of the Online Safety & Media Regulation Bill, Head 10 (xii).

36 *ibid* Head 52B.

37 *ibid* explanatory note at Head 52.

38 *ibid* Head 52A.

scrutiny.<sup>39</sup> However, on 10 December 2020 the finalised General Scheme was notified to the European Commission for an assessment of its conformity with EU law on the regulation of online services.<sup>40</sup>

It is of concern that the Bill does not specifically provide for the establishment of an Online Safety Commissioner as part of the Media Commission. While we note the Government's intention that one of the commissioners appointed to the Commission will be delegated to oversee the online safety functions,<sup>41</sup> consideration should be given to making provision for, and naming, this role in legislation. The Online Safety Commissioner must be adequately resourced, with appropriate ring-fenced funding and staffing, and granted robust statutory powers to sanction companies who do not comply with timebound codes for the protection of children and young people online that are in line with fair procedures. The current powers of the Commission should be amended to include an individual complaints mechanism to ensure that vulnerable children and young people whose rights are not respected by the online providers and who have exhausted all appropriate channels with the relevant platform, have access to an effective remedy. This is in line with their rights under the European Convention of Human Rights<sup>42</sup> and in line with the Council of Europe *Guidelines* which state that in the digital environment an effective remedy includes inquiry, explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation.<sup>43</sup> Private communications services will not currently fall under the remit of this Bill, unless it is in relation to illegal (rather than harmful) content. It is important that this categorisation is re-visited given that content can be shared amongst multiple users in one group (up to 250+ users per group on WhatsApp for example) and it is questionable if this should therefore be considered 'private'.

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39 Communication received by the Children's Rights Alliance from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, 2 November 2020.

40 *ibid.*

41 *ibid.*

42 European Convention of Human Rights Arts 6 and 19.

43 Council of Europe, '*Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment*' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24.

## ➔ **Recommendations:**

- ▶ Amend the General Scheme of the Bill to specifically provide for the establishment of an Online Safety Commissioner as part of the Media Commission.
- ▶ Amend the General Scheme of the Bill to specifically provide for an individual complaints mechanism to ensure that vulnerable children and young people whose rights are not respected by the online providers and who have exhausted all appropriate channels with the relevant platform, have access to an effective remedy.
- ▶ Amend the General Scheme to provide for one of the functions of the Online Safety Commissioner to be the evaluation and regulation of educational and community awareness programmes on online safety.



# Child Safety Online

## Case Study



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Daniel\* was the victim of a serious and sustained cyberbullying campaign coming from students in his school. The cyberbullying centred on videos he had posted when he was younger on YouTube.

Daniel's parents spent two years desperately trying to get the videos removed from the platform. Daniel was 10 when he made the videos and did not remember the password or email address for his profile. When his parents asked YouTube to remove the account along with the videos, YouTube did not consider the content to be in violation of their community standards (a list of official rules that users must comply with).

However, the bullying was so severe, Daniel moved schools.

Daniel's secondary school teacher reached out to our member organisation CyberSafeKids, which works towards making technology safe for children. The teacher was concerned that the content was re-emerging online and likely to be found by his new peers. She also noted that Daniel was becoming increasingly distressed about the bullying starting again.

CyberSafeKids intervened arguing that the content should be removed on the basis that this was an account of an under-age user (YouTube's minimum age requirement is 13 with parental permission). CyberSafeKids were able to advance the efforts of Daniel's parents through a contact with Google but it still took 10 days to remove the videos, with YouTube eventually agreeing that given the fact it was an under-age user, the content should have been removed at the time.

Ireland has been promised a new Online Safety Commissioner who will set safety standards for online services. As it stands, the new Commissioner won't deal with complaints from the public, which is a missed opportunity for parents like Daniel's. A complaints service would allow concerned parents to access help to get their issue addressed and, in a case like Daniel's, get online content removed in a timely manner.

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*\* Names and some identifying details have been changed to protect the privacy of the individual and families involved at the heart of this story.*



# 16

# Reform of the Family Law Courts

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Section Grade:

# C



## The Programme for Government commits to:

Enact a Family Court Bill to create a new dedicated Family Court within the existing court structure and provide for court procedures that support a less adversarial resolution of disputes.

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▶ Progress: **Some**

Build a new Family Law Court building in Dublin and ensure that court facilities across the country are suitable for family law hearings so these hearings can be held separately from other cases.

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▶ Progress: **Limited**

'Reform of the Family Law Courts receives a C grade. The Heads of the Family Law Court Bill were published in 2020 providing for a new Family Court Structure. A Family Justice Oversight Group has been established to agree a high-level vision as well as medium and long-term objectives for the development of a national family justice system in parallel with the establishment of a dedicated Family Court structure. The new Family Court Complex is also progressing with the final building plans going through the Courts Service's internal processes and expected to go to tender in 2021.

## Ireland's duties and responsibilities in international law



The UN Convention on the Rights of the Child (UNCRC) obliges the State to ensure that the child's best interests are a primary consideration in all actions concerning children, including in courts of law.<sup>1</sup> In examining Ireland's progress under the UNCRC, the Committee on the Rights of the Child expressed concerns at the delays in hearing family law cases and that judges in family law cases are not provided with 'systematic training for dealing with cases concerning children'.<sup>2</sup> The Committee recommended that sufficient resources be provided to train judges hearing family law cases involving children and that these cases 'are prioritised in the court system'.<sup>3</sup>

The Council of Europe's Guidelines on Child-Friendly Justice provide that States should ensure that proceedings involving children are dealt with in 'non-intimidating and child-sensitive settings'.<sup>4</sup> The Guidelines recommend that interviewing and waiting rooms for children 'in a child-friendly environment' be provided in court settings.<sup>5</sup> They recommend that children should be familiarised with the Court setting, the layout and the roles and identities of officials ahead of attending proceedings and that Court sessions involving children should be adapted to the child's pace and attention span with planned regular breaks and hearings that are limited in duration.<sup>6</sup> The Guidelines also recommend that all proceedings involving children should be heard in a speedy manner and the urgency principle should be applied.<sup>7</sup> States should establish 'a system of specialised judges and lawyers for children' and 'further develop courts in which both legal and social measures can be taken in favour of children and their families'.<sup>8</sup>

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 3.

2 UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland (2016) CRC/C/IRL/CO/3-4, para 47.

3 *ibid* para 48.

4 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 29.

5 *ibid*.

6 *ibid*.

7 *ibid* 28.

8 *ibid* 33.

## ► What's the context for this commitment?

Ireland does not have a separate, specialist family court system, and family law proceedings are currently conducted across the existing structures of the District Court, Circuit Court and High Court. In Dublin, there are dedicated family law District Courts and Circuit Courts with High Court sittings allocated to hear such cases, while outside of Dublin, allocation of hearings is dependent on each individual District or Circuit Court with cases heard on designated family law days.<sup>9</sup> Most proceedings involving children are subject to the *in camera* rule (meaning they are heard in private).

Family members are often at loggerheads and the physical environment does not provide them with the necessary space and privacy to deal with very personal and sensitive matters. The design of courtrooms has 'a direct impact on the way in which family law proceedings are conducted' and the way in which they are designed forces parties into close proximity with one another leading to increased 'anxiety, tension and has given rise to significant safety issues'.<sup>10</sup> Judges are making decisions in courts around the country about intimate family issues often in the same room as they are dealing with other matters such as criminal law.<sup>11</sup>

The family law system and the structure of the Family Law Courts have not been designed with the presence of children and families in mind and have been subject to criticism and review by stakeholders and experts for over two decades. In 1996 the Law Reform Commission (LRC) published a report on the reform of the Family Law Courts<sup>12</sup> in which it highlighted the issues in the system and noted that '[t]he courts are buckling under the pressure of business. Long family law lists, delays, brief hearings, inadequate facilities, and over-hasty settlements are too often the order of the day'.<sup>13</sup> The LRC also highlighted that 'Judges dealing with family disputes do not always have

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9 Houses of the Oireachtas Joint Committee on Justice and Equality Report on Reform of the Family Law System October 2019, 22.

10 The Bar of Ireland, 'Submission by Council of The Bar of Ireland to the Joint Oireachtas Committee on Justice and Equality on the Reform of the Family Law System' (The Bar of Ireland 2019) 7.

11 Prof. G Shannon, *Eleventh Report of the Special Rapporteur on Child Protection* (DCYA 2018) 72.

12 Law Reform Commission, *Report on Family Courts* (LRC 1996).

13 *ibid* ii.

the necessary experience or aptitude. There is no proper system of case management' and that 'the courts lack adequate support services, in particular the independent diagnostic services so important in resolving child-related issues'.<sup>14</sup> The LRC recommended the establishment of a system of regional family courts at Circuit Court level presided over by a Circuit Court Judge nominated for a period of a least one year 'assigned on the basis of his or her suitability to deal with family law matters'.<sup>15</sup>

Despite the fact that most proceedings involving children are subject to the *in camera* rule (meaning they are heard in private), a large number of Court facilities still lack basic privacy. There is a lack of consultation rooms which results in delays in the hearing of family law applications and leads to the provision of legal advice sometimes in hallways, rather than in child-friendly consultation rooms.<sup>16</sup> Generally, there is no special provision made to accommodate children involved in family law proceedings and children who are present in the court may witness or experience violence or other upsetting behaviour due to insufficient staffing of Gardaí in courthouses.<sup>17</sup>

The Child Care Law Reporting Project has highlighted issues around access such as the lack of ramps, poor acoustics, lack of proper waiting areas and lack of privacy.<sup>18</sup> It recommends the establishment of a specialist family court sitting in court venues that 'afford the litigants dignity and privacy and provide for private consultations with their lawyers along with a minimum level of physical comfort'.<sup>19</sup> They also recommend that the venues should have easy access, a reception area with information on the proceedings of the day, waiting areas with seating and access to water and vending machines, consultation rooms and a separate waiting area for vulnerable litigants, witnesses and children.<sup>20</sup>

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14 *ibid.*

15 *ibid.* 22.

16 The Bar of Ireland, 'Submission by Council of The Bar of Ireland to the Joint Oireachtas Committee on Justice and Equality on the Reform of the Family Law System' (The Bar of Ireland 2019) 7.

17 *ibid.*

18 Carol Coulter, *District Court Child Care Proceedings: A National Overview* (Child Care Law Reporting Project 2019) 38.

19 *ibid.*

20 *ibid.*

In 2019, the Joint Committee on Justice and Equality published a report on *Reform of the Family Law System* recommending that legislation is brought forward as a priority providing for a 'more efficient family law courts structure' and that a dedicated and integrated family court be established within the existing court structures.<sup>21</sup> The Committee also noted that current venues are not fit-for-purpose and recommended that a review be undertaken of the physical infrastructure of family law courts, with a view to 'producing a blueprint for a modern, efficient and family-friendly courts infrastructure'.<sup>22</sup> It was also recommended that the necessary funding be allocated to build the dedicated family law complex in Dublin.<sup>23</sup>

## ► What's been achieved for children so far?

### Family Law Court Bill

The Programme for Government committed to enact a Family Law Court Bill that will create a new dedicated Family Court and to provide for court procedures that 'support a less adversarial resolution of disputes'.<sup>24</sup> Specialised family court systems are commonplace in other jurisdictions in Europe, as well as in common law jurisdictions, though the form can vary from specialist divisions in existing court structures to completely separate specialist courts.<sup>25</sup>

In September 2020, the Government published the Heads of Bill providing for the establishment of a District Family Court,<sup>26</sup> a Circuit Family Court<sup>27</sup> and a Family High Court<sup>28</sup> within existing court structures. Each court level will

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21 Houses of the Oireachtas, Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Houses of the Oireachtas 2019) 43.

22 *ibid.*

23 *ibid.*

24 Government of Ireland, *Programme for Government, Our Shared Future*, 85.

25 Consultative Council of European Judges *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialisation of Judges* (Council of Europe 2012) <<https://bit.ly/3pkuihB>> accessed 21 January 2021.

26 Family Court Bill General Scheme (September 2020) Head 6.

27 *ibid* Head 11.

28 *ibid* Head 16.



have a principal Judge with a number of other specialist Judges.<sup>29</sup> The Heads of Bill provide that in order for a person to be assigned as a Judge to any of the Family Courts they have to be a 'a suitable person to deal with matters of family law' by reason of their 'training or experience and temperament'.<sup>30</sup> Judges of the District and Circuit Courts will be required to undertake 'courses of training or education, or both, as may be required by the Judicial Studies Committee established by the Judicial Council',<sup>31</sup> however there is no such requirement included for Judges of the Family High Court. It is also provided that all proceedings at every level shall be 'as informal as practicable' and Judges, barristers and solicitors shall not wear wigs and gowns during proceedings.<sup>32</sup>

Currently in Ireland most child and family law cases are heard by generalist judges in the general courts system. However, specialised family or children's court systems are commonplace across Europe and in other common law jurisdictions where the judiciary and lawyers have specialised training.<sup>33</sup> It is welcome that there will be a requirement for judges to have some level of suitability to become a judge in the Family Law Courts and that there will be a requirement to undergo training. Consideration should be given to extending the requirement to undergo training for judges of the High Court also. It is disappointing that the Heads of Bill do not make any reference to the need for solicitors and barristers to undergo training. The Council of Europe's *Guidelines on Child-Friendly Justice provide that states should establish 'a system of specialised judges and lawyers for children'*.<sup>34</sup> Consideration should be given to requiring specialist training of all professionals working in the family law courts reflecting child friendly justice principles and how to communicate with children and young people.

The Heads of Bill make provision for a Family Law Rules Committee to be established which would develop a comprehensive set of overarching rules

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29 *ibid* Heads 6(2), 11(2) and 16(2).

30 *ibid* Heads 6(4), 11(4) and 16(4).

31 *ibid* Heads 6(8) and 11(8).

32 *ibid* Heads 10(5), 15(5) and 17(3).

33 Prof. G Shannon, *Eleventh Report of the Special Rapporteur on Child Protection* (DCYA 2018) 7.

34 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (Council of Europe 2010) 33.

and practice guidelines to be established.<sup>35</sup> This is a welcome measure to work towards consistency in the new system. Under the new system, jurisdiction for non-contentious cases of Judicial Separation, Divorce, and Civil Partnership will rest in the District Court, with complex or contested Family Law cases heard in the Circuit Family Court with the Family High Court maintaining jurisdiction to hear cases on adoption, child abduction and special care cases as well as having the jurisdiction to hear cases and appeals.<sup>36</sup>

It is welcome that the guiding principles contained in the Heads of Bill provide that where a child is involved in proceedings or is likely to be affected by the outcome that the best interests of the child are 'a primary consideration'<sup>37</sup> and that when a child is capable of forming their own views there is an obligation to ensure 'as far as practicable that the views of the child are ascertained and given due weight having regard to the age and maturity of the child'.<sup>38</sup>

The publication of the Heads of Bill and the priority afforded to them is a positive development. However, the next iteration of the Bill could address some important challenges. This reform presents an opportunity to house key services and agencies under the one roof and develop a new model that will promote an interdisciplinary system to ensure effective communication between all disciplines. This could mean that family law judges could refer parties to skilled personnel to draw up parenting plans, carry out assessments such as parenting capacity assessments; implement supervised access orders; and monitor custody and access orders and facilitate their restoration if they breakdown.

Children and families contact the Children's Rights Alliance on an ongoing basis as they find the family law system hard to navigate and are seeking information on their rights and the legal process.<sup>39</sup> According to the Council of Europe's *Guidelines on Child-Friendly Justice*, children should be promptly provided with information on their rights, the system and procedures involved. The child's role should also be explained along with any existing support

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35 Family Court Bill General Scheme (September 2020) Head 18.

36 *ibid* Part 3.

37 *ibid* Head 5(3)(d)(i).

38 *ibid* Head 5(3)(d)(ii).

39 Children's Rights Alliance, *Helpline and Legal Advice Clinics Annual Report 2019 (2020)* 9.

mechanisms and the appropriateness and possible consequences of using in-court or out-of-court proceedings such as mediation for proceedings involving children.<sup>40</sup> The proposed legislation could provide that relevant information is given to children and their parents or legal representatives and that child-friendly materials on legal proceedings could be made available and widely distributed as outlined in the *Guidelines*.<sup>41</sup> Any information provided to children should be adapted to their age and maturity and be in a language they can understand, which is sensitive to gender and culture.<sup>42</sup> Digital technology could help to make information accessible to children, families and organisations who support and work with them. Legislators could also consider making a provision to employ a specialist child court liaison officer in all regions to provide information and support for children and young people who come into contact with the family law system.

The Government has established a Family Justice Oversight Group to agree a high-level vision and medium- and long-term objectives for the development of a national family justice system in parallel with the establishment of a dedicated Family Court structure.<sup>43</sup> The Group will also review and evaluate the effectiveness of the approach to the development of the national family justice system within two years.<sup>44</sup> Consideration is being given to how to engage in consultations with service users<sup>45</sup> and a commitment has been made to holding a consultation specifically with children and young people.<sup>46</sup>

The Department of Justice views the Family Court Bill as a major component in the development of 'a more efficient and user-friendly family court system that puts families at the centre of its activities, provides access to specialist supports and encourages the use of alternative dispute resolution in family law

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40 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (Council of Europe 2010) 20-21.

41 *ibid.*

42 *ibid.*

43 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

44 *ibid.*

45 *ibid.*

46 Minister for Justice, Helen McEntee TD, Dáil Debates, Written Answers, Legislative Matters, 10 December 2020 [41560/20].



**Children and families  
contact the Children's  
Rights Alliance on  
an ongoing basis as  
they find the family  
law system hard  
to navigate...**

proceedings'.<sup>47</sup> The overall aim is to change the culture so that the focus of the family justice system meets the complex needs of people who require help with family justice issues.

The General Scheme of the Family Court Bill has been referred to the Office of the Parliamentary Counsel for drafting and to the Joint Oireachtas Committee on Justice for pre-legislative scrutiny.<sup>48</sup> There is no timeline available for when this work will commence or be completed.

## Family Law Court complex

The Programme for Government also committed to constructing a new Family Law Court building in Dublin and working to ensure that court facilities outside of Dublin are suitable for family law hearings.<sup>49</sup> In 2015, it was announced that a site purchased by the Office of Public Works in Hammond Lane, Dublin would be used for building a purpose-built family law complex. However, progress had stagnated due to the failure to reach agreement on the structure and funding.<sup>50</sup> The project as originally proposed envisaged a court complex providing a Family Law Court facility, a new Children's Court to replace the existing Children's Court in Smithfield and new accommodation for the Supreme Court.<sup>51</sup>

In 2020, capital funding was provided for the ongoing preparatory works on the Hammond Lane site and the Department of Justice has made funding available to go ahead with the project.<sup>52</sup> Following detailed discussions regarding the cost and scale of the project together with the recent allocation of additional funding, the current proposal is for a Family Law Court facility

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47 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

48 *ibid.*

49 Government of Ireland, *Programme for Government, Our Shared Future*, 85.

50 Irish Legal News, Funding secured for Hammond Lane family courts complex, 15 July 2020 <<https://bit.ly/3601bs8>> accessed 21 January 2021.

51 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

52 Minister for Justice Helen McEntee TD, Dáil Debates, Written Answers, 17 November 2020 [36161/20].

only.<sup>53</sup> The exact amount of funding has not been specified as the project will have to go to tender.<sup>54</sup> The final plans for the building are being progressed through the Courts Service and are expected to be considered at the Courts Services' Board meeting in February 2021.<sup>55</sup> A revised business case to support this is being prepared at present in accordance with the requirements of the public spending code. Once completed this will be submitted to the Department of Justice for approval to proceed.<sup>56</sup>

While the progress to date and the renewed commitment to build a dedicated Family Law Court complex in Dublin is welcome, the renewed momentum needs to be maintained. The Office of Public Works purchased the site for £4 million in 1999 and it has remained vacant since that time, some 20 years.<sup>57</sup> In developing and designing the new family courts, all stakeholders should be consulted including legal professionals, families and those who work to support them. Children and young people should also be consulted for their views as was done with the development of the Children's Court in Smithfield. It is essential that the opportunity to provide a child-friendly environment is not missed. The Council of Europe's *Guidelines on Child-Friendly Justice* should inform the design of the new court building in particular to ensure that interview and waiting rooms for children are provided 'in a child-friendly environment' in court settings.<sup>58</sup>

A number of courthouses outside of Dublin were refurbished in 2018 to provide 'state of the art' family law court facilities in Wexford, Waterford, Letterkenny, Mullingar and Drogheda.<sup>59</sup> *The National Development Plan (NDP) 2018- 2027* commits to completing several courthouse projects outside of Dublin city; these will include new or refurbished courthouses in regional cities and county towns where facilities remain substandard (including Galway City,

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53 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

54 Minister for Justice Helen McEntee TD, Dáil Debates, Written Answers, 17 November 2020 [36161/20].

55 Communication received by the Children's Rights Alliance from the Department of Justice, 21 January 2021.

56 Communication received by the Children's Rights Alliance from the Department of Justice, 6 November 2020.

57 Olivia Kelly, 'OPW targeted for criticism over vacant sites', *The Irish Times* 5 August 2013.

58 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (Council of Europe 2010) 30.

59 Communication received by the Children's Rights Alliance from the Department of Justice, 21 January 2021.

Wicklow Town, Portlaoise, Tralee and Roscommon) and at provincial locations such as Dungloe and Tuam.<sup>60</sup> The NDP also allows for the construction of standard county town type court facilities at a number of locations in County Dublin and in North Kildare, Bray and Navan.<sup>61</sup> The Courts Service is in the process of identifying and acquiring suitable sites for the projects.<sup>62</sup>

## ► **What children need next**

Reform of the Family Law System and the Building of the new Family Law Courts are long overdue. It is of concern that the new Family Law System may take a number of years to implement. Reform in this area is long overdue and the focus should be on implementing a new Family Law Court structure during the lifetime of this Government. A clear timeline is needed for how the building works are going to progress on the new Family Law complex and how the views of children and young people will form part of its development. It is welcome that Heads of Bill were published in 2020 for the new Family Law System and that an oversight group has been established. Considering the extent of the reform proposed it is welcome that the Oversight Group will consider each stage of the ongoing reform, but it is key that momentum is maintained to ensure it is delivered during the term of this Government.

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60 *ibid.*

61 Communication received by the Children's Rights Alliance from the Department of Justice, 21 January 2021.

62 *ibid.*

## ➔ Recommendations

- ▶ Publish a timeline for the publication and commencement of the Bill as a matter of urgency.
- ▶ Consider including a requirement for specialist training for all professionals working in the family law courts, including solicitors and barristers, in the next iteration of the Bill.
- ▶ Consider using this reform as an opportunity to house key services and agencies under one roof and develop a new model that will promote an interdisciplinary system to ensure effective communication between all disciplines.
- ▶ Ensure the views of children are heard and given due weight in the reform of the Family Law System and in the design of the new Family Law Complex.
- ▶ Ensure that the reforms of the Family Law system and the design of the new Family Law Complex are informed by the Council of Europe's *Guidelines on Child Friendly Justice*.



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Founded in 1995, the Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

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